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ABSTRACT

Proceedings from the 8th Indian Town Hall include conference activities of 22 representatives of American Indian tribes and the State of Arizona as they participated in the 2-day conference on state-tribal relationships. Eleven keynote speeches in full text are presented along with comments from seven tribal representatives on the conference and expression of gratitude to the Arizona Commission of Indian Affairs for its fine working relationship with the tribes. Topics addressed at the conference include: specific examples of negotiating state-tribal agreements; economic development for the tribes; Department of Economic Security (DES) Programs available to Indian tribes; state's interpretation of cigarette and sales taxes; an Indian legislator's views on state-tribal relations; supreme court rulings affecting state-tribal relations; health programs affecting the Indian tribes; the need for inspection of mobile housing installation; civil rights applied to the Indian tribes; cooperative law enforcement; and elements of the State-Tribal Compact Act of 1979. (ERB)

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"State-Tribal Relationships"

—A Report on the 8th Indian Town Hall

November 13-14, 1980

Held On The White Mountain Apache Reservation

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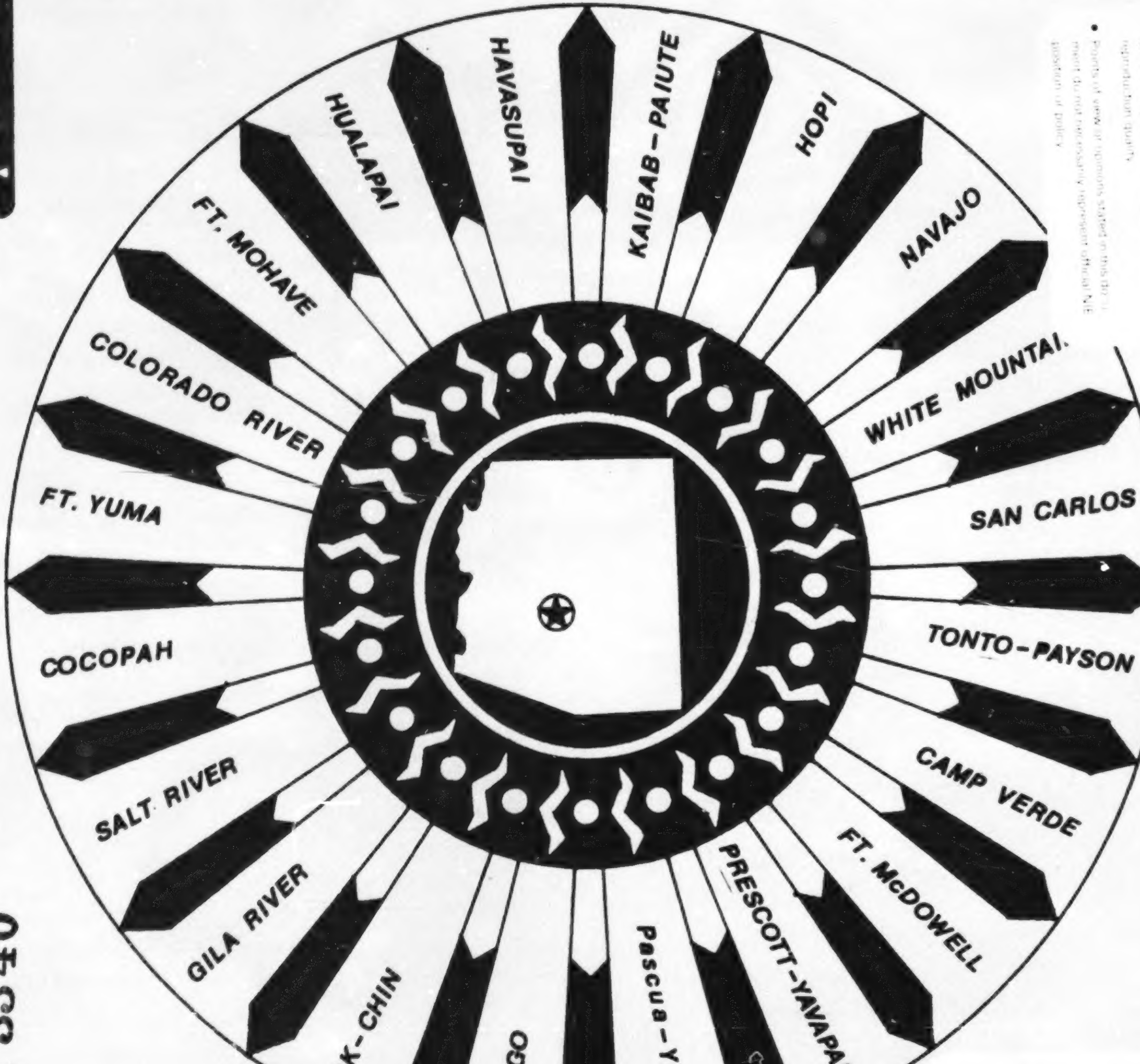
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ARIZONA COMMISSION OF INDIAN AFFAIRS

FOREWARD

The Arizona Commission of Indian Affairs was established by the Arizona Legislature in 1953 and is operative under Arizona Revised Statutes Article 4, Titles 41-541 and 41-542 as amended 7/64 and 4/74.

A very important area of our responsibility is to improve communications, understanding and develop working relationships between all concerned and we have diligently been working towards that extent.

The Commission has successfully sponsored eight Annual Indian Town Hall Conferences. Topics of discussion: "Arizona Indian Water Rights," "Sovereignty & Inter-Governmental Relations with Arizona's Indian Tribes," "Public Law 93-638 Indian Self-Determination and Education Assistance Act (Area of Contracting)," "Tribal Water Rights: Today's Concern," "Reservation School Districts," "The Control of Natural Resources" and "State-Tribal Relationships."

The success of the conferences has been in the participants achieving a mutual and beneficial understanding as to the Indian and non-Indian points of view relative to the specific topic which is chosen by the State's tribal leadership.

It is hoped that the information contained in this report will enable the reader to better understand the overall spectrum of all citizens of this State relative to state-tribal relationships.

The Commission would like to express its appreciation to all those that participated by contributing their expertise towards achieving understanding and promoting working relationships.

Sincerely,

LEONA M. KAKAR, Chairperson

CLINTON M. PATTEA,
Executive Secretary

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June, 1981

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* *

COMMISSION STAFF

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DIANE C. DANKERL------------------------ADMINISTRATIVE ASSISTANT
ROSE ANN STELLHORN-------------------------------------SECRETARY

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ARIZONA COMMISSION OF INDIAN AFFAIRS

AGENDA

"STATE - TRIBAL RELATIONSHIPS"

PLACE: SUNRISE PARK HOTEL
WHITE MOUNTAIN APACHE RESERVATION
NOVEMBER 12 - 14, 1980

NOVEMBER 12 (Wednesday)	REGISTRATION 6:00 - 9:00 P.M. Hotel Lobby Welcoming Hostesses: Ms. Leona Kakar, Chairperson, Ms. Yvonne Garrett, Commission Member
NOVEMBER 13 (Thursday)	
9:00 A.M.	Meeting called to order - Chairperson Leona Kakar Welcoming Remarks - MR. RONNIE LUPE, CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE, who was in Washington, represented by Ms. Mariddie J. Craig
10:00 A.M.	(Moderator - Mr. Clinton Pattea, Executive Secretary) MR. WILLIAM LAVELL, Solicitor, U. S. Department of the Interior "NEGOTIATING STATE-TRIBAL AGREEMENTS - SOME SPECIFIC EXAMPLES"
10:30-11:00 A.M.	MR. BILL VANDENBOSCH, Planning Director, Office of Economic Planning & Development "ECONOMIC DEVELOPMENT AND THE TRIBES"
11:00-11:30 A.M.	DR. EDD F. BROWN, Director, Office of Intergovernmental Operations, Department of Economic Security "DES PROGRAMS AVAILABLE TO INDIAN TRIBES"
11:30-12:00 NOON	MR. ELLIOTT HIBBS, Director, State Department of Revenue "STATE'S INTERPRETATION OF CIGARETTE AND SALES TAXES"
12:00-1:00 P.M.	LUNCHEON (Moderator - Yvonne Garrett, Commission Member) Guest Speaker: THE HONORABLE SENATOR ARTHUR HUBBARD "AN INDIAN LEGISLATOR'S VIEWS ON STATE-TRIBAL RELATIONS"
1:00-1:30 P.M.	(Moderator - Leona Kakar, Chairperson) MS. CHARLEEN GREER, Assistant Attorney General "RECENT SUPREME COURT RULINGS AFFECTING STATE-TRIBAL RELATIONS"
1:30-2:00 P.M.	MR. SHELDON ELMAN, Assistant Director, State Department of Health Services "HEALTH PROGRAMS AND THE INDIAN TRIBES"
2:00-2:30 P.M.	MR. RICHARD WOLFE, Director, Arizona Mobile & Mfg. Housing Standards "THE NEED FOR INSPECTIONS OF INSTALLATIONS OF MOBILE HOUSING
2:30-3:00 P.M.	MR. PHIL AUSTIN, Director, Division of Civil Rights, Attorney General's Office "CIVIL RIGHTS AND THE INDIAN TRIBES"

3:00-3:30 P.M. — COL. RALPH MILSTEAD, Director, Department of Public Safety "COOPERATIVE LAW ENFORCEMENT" (Capt. Richard P. Landis, Administrative Officer for Highway Patrol, who was to represent Col. Milstead was unable to attend due to weather conditions at Springerville airport)

3:30-4:00 P.M. — MR. TOM CLARK, Deputy Director, State Department of Water Resources "CAP ALLOCATIONS"

7:00 P.M. — BANQUET
(Moderator Clinton Pattea, Executive Secretary)
Guest Speaker: MR. JOHN MULKEY, Legislative Assistant to U. S. Senator Dennis DeConcini
"ELEMENTS OF THE STATE-TRIBAL COMPACT ACT OF 1979"

NOVEMBER 14 (Friday)

9:00 A.M. — Brief Opening Remarks - Chairperson Leona Kakar
(Moderator - Mr. Clinton Pattea, Executive Secretary)

TRIBAL PRESENTATIONS:

AK-CHIN - Mrs. Leona Kakar, Chairperson
CAMP VERDE - Mr. Ted Smith, Chairman
COCOPAH - Mr. Robert Sam Barley, Chairman
COLORADO RIVER - Mr. Franklin McCabe, Chairman
FORT APACHE - Mr. Ronnie Lupe, Chairman
FORT MCDOWELL - Mrs. Joan Enos, Vice-President
FORT MOJAVE - Mr. Llewellyn Barrackman, Chairman
FORT YUMA - Mr. Vincent Harvier, President
GILA RIVER - Mr. Alexander Lewis, Sr., Governor
HAVASUPAI - Mr. Wayne Sinyella, Chairman
HOPI - Mr. Abbott Sekaquaptewa, Chairman
HUALAPAI - Mr. Wilfred Whatoname, Chairman
KAIBAB-PAIUTE - Mr. Bill Tom, Chairman
NAVAJO - Mr. Peter MacDonald, Chairman
PAPAGO - Mr. Max Norris, Chairman
PASCUA YAQUI - Mr. David Rameriz, Governor
PAYSON TONTO APACHE - Mr. Melton Campbell, Chairman
SALT RIVER - Mr. Hershel Andrews, Chairman
SAN CARLOS - Dr. Ned Anderson, Chairman
YAVAPAI-PRESCOTT - Mrs. Patricia McGee, President

12:00 - 1:30 P.M. — LUNCHEON (Moderator - Mr. Clinton Pattea, Executive Secretary)
Presentation: MS. PAT SCHROEDER, Indian Planner, Office of Economic Planning & Development

1:30 P.M. — Adjournment

ARIZONA COMMISSION OF INDIAN AFFAIRS

8TH ANNUAL INDIAN TOWN HALL

STATE-TRIBAL RELATIONSHIPS

PLACE: Sunrise Park Hotel
White Mountain Apache Reservation
November 14-16, 1980

COMMISSION MEMBERS PRESENT:

Leona Kakar, Chairperson
Rosetta Hubbard
Yvonne Lynne Garrett
Paul Rees
Charleen Greer, Assistant Attorney General
Sheldon E. Elman, Department of Health Services

MEMBERS ABSENT:

Edmund Thompson
Phillip Stago, Jr.
Delores Savala
Earl Havatone
Alexander Ami
Bruce Babbitt, Governor
Carolyn Warner, Superintendent, Department of Education

NOVEMBER 13th (Thursday)

Mrs. Leona M. Kakar, Chairperson, welcomed the conference participants, then read a letter from Governor Babbitt, who could not attend due to a prior commitment. Mr. Clinton M. Pattea, Executive Secretary, introduced the new Commissioners, and recognized the long years of service Vice-Chairman Pete Homer, Sr. has given to the Commission and the Indian citizens of this State. Mr. Homer's term expired.

MR. RONNIE LUPE, CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE - "WELCOMING REMARKS":

(Given by Ms. Mariddie J. Craig, Administrative Assistant to the Tribal Chairman, in the absence of Mr. Lupe who was in Washington, D.C.)

I am indeed honored to be here with you and to welcome you to the home of the White Mountain Apache people and, of course, to welcome you to the 8th Annual Indian Town Hall. It is always a privilege to welcome delegates and visitors to our beautiful homeland and to share with you the beauty around us. I also bring greetings to you from our Tribal Chairman, Mr. Ronnie Lupe, who could not be here with you. He was called away on an important tribal business matter in Washington, D. C. This gives me the opportunity to present to you what I feel are personal thoughts and concerns expressed to me by my Tribal Chairman regarding "State-Tribal Relationship".

As long as our people can recall we have had misunderstandings with our neighbors concerning difference of beliefs. We the Indian People have had to stand up for our ways. We know that from time immemorial we have had rightful claims on precious resources found within the borders of our Reservation. But it has been contested by the State that these precious resources belong to them and not us as aboriginal owners. The main water shed in the State of Arizona is on the tribal lands of the White Mountain Apache Tribe. The State, however, *is making its claim on it too. This issue is in litigation now and the Tribe continues to stalwartly uphold their position of being aboriginal owners.*

Our land is sacred to us. We have heavily forested timberlands which is a number one revenue producing Enterprise of the Tribe. Annually three million board feet is cut at our tribal sawmill. Leases that were executed during the early development of the tribal government, implement by BIA with the intent of bringing in income to the Tribe, has created animosity towards the tribal government charged with the responsibility of protecting its land. The Tribal Council has enacted Tribal Resolutions not to renew Leases upon their expiration. Their reaffirmation of its position to safeguard the land and its people have meant little to the Lessee's, thus creating more dissention. With recent rulings of jurisdictional powers over non-Indians on Indian Reservations, we cannot avail our land to Lessee's.

Inspite of our differences we have mutual concerns with the State of Arizona, but we must remain separate as neighbors and unless we are treated equally and no less than the Anglo American citizen, can we accomplish our responsibility to this great country and the people we serve. We have many federal grants received by the State of Arizona, they are then channeled to the Indian Reservations. If such grants were directly received by the Indian people they could initiate necessary programs. If the States are really willing to help the Indian people, then perhaps they should provide specialized technical assistance in letting the Indian people take on responsibilities on their own sovereign status. We don't want to be under the State system.

Much of the misunderstanding could be alleviated if the higher echelons of the State involved in policy setting could contact the Indian Tribes of proposals and/or policies affecting us. Sometimes if a Bill is passed without the knowledge of the Indian people, we can assume it was a sneaky move. This is where problems continue to exist. Better communications among all involved would help towards better cooperation. We can all start out anew by greeting the newly elected officials of the State and National political figures. Our Tribal Chairman has encouraged each Tribal Council Member to contact their elected Congressional delegates, I would also reiterate the counsel of our Tribal Chairman to you to send a letter or place telephone calls to your congressional people.

We, the Indian people, do not claim to be better than our neighbors, we do claim to be unique and therefore ask to be respected for who we are and what we represent. When we invite guests into our Reservation, it is similar to inviting a guest into our home. We want our guests to respect our property, our children's pets, and our autonmy. So it is the same when we extend warm greetings to you, "Hon-dah", meaning welcome. We express this in all sincerity and all we ask is you respect what we have within our Reservation boundaries.

***MODERATOR CLINTON PATTEA INTRODUCED MR. WILLIAM LAVELL, SOLICITOR, U. S. DEPARTMENT OF THE INTERIOR: "NEGOTIATING STATE-TRIBAL AGREEMENTS - SOME SPECIFIC EXAMPLES"** (Due to electronic difficulties Mr. Lavell's presentation was not recorded, however, if the reader is interested in obtaining a xerox copy of "State-Tribal Cooperative Agreements", which was the source of his talk, please contact the Commission Office.*

MR. CLINTON PATTEA, MODERATOR, INTRODUCED MR. BILL VANDENBOSCH, PLANNING DIRECTOR, OFFICE OF ECONOMIC PLANNING & DEVELOPMENT: "ECONOMIC DEVELOPMENT AND THE TRIBES"

I am pleased to have the opportunity to speak to you today. I have had the pleasure of working for the Office of Economic Planning and Development for the past eight years and have until recently been responsible for the Governor's CETA program and before that worked with a number of you as head of the Indian Planning Team in OEPAD. Our joint efforts with a number of tribes including the Fort Mojaves (Lew Barrackman), the Cocopah (Bob Barley - Paul Soto), the Quechans (Harold Chapois - Felix Montague), the Havasupai (Oscar Paya - Leon Rogers), the Yavapai-Prescotts (Pat McGee - Ernie Jones) those joint efforts have resulted in national recognition from HUD on how states and tribes can work together.

I have known many of your for a number of years and therefore feel I can speak frankly. As you are all too well aware, the growth in Arizona over the past 30 years has been explosive. In just the past 10 years nearly 1 million new people have come into this great state.

Phoenix and Tucson are booming. The state is one of the most desirable places to live in the country. People come from across the Pacific and Atlantic oceans to see Arizona and the Grand Canyon.

Yet despite this prosperity, we have nearly 28% of the land area of the state where people live in poverty conditions rivaled only by the poorest parts of the world. I could recite the dismal statistics, but you know them better than I. You live with them. Your people suffer them.

Today I am to speak about economic development. Did you know that it is said... "When a man comes to me for advice, I find out the kind of advice he wants, and I give it to him."

Well, that's not why I am here today. Although I must say I am humbled to be here. In my travels to the various tribes I find there is more wisdom there than I carry in my head.

The problems of economic development on Indian reservations are as diverse as the Indian cultures represented here today. Economic Development means most concisely, "How do we get jobs for our people". Let me generalize about reservations. They can be broken down into two very rough categories: The HAVES and the HAVE NOTS.

The HAVES generally have three basic attributes: 1) Natural Resources (e.g. coal, uranium, copper, timber, natural gas); 2) White Mountain, Papago, Navajo, San Carlos, location to market (Salt River, Gila River, and 3) Labor supply (Hopi). A few tribes have one, two or all three of these attributes.

And then you have the HAVE NOTS, they generally have no natural resources, poor location and limited resources. Of course, most of you are aware that the purpose in the 1880's when the reservations were formed was that you were all supposed to be HAVE NOTS.

It is only through the precise fine tuning of federal government planning that you were located in areas that 100 years later some of the land turned out to be valuable.

There are two major points to be reviewed, the first is how do you attract economic development and the second is how do you manage it once you have it.

In addressing the first question of how do you attract economic development, I think it is important to realize the mistakes that have been made.

We cannot expect the federal government to attract industry and jobs to Indian reservations.

To this day it mystifies me as to why the tribes continue to try to maintain a direct line to Washington. There are a couple of quotes I would like to share with you that bring home the point. Marshall McHuhan is quoted as saying "Politics offers yesterday's answers to today's problems."

One wit describes Congress as follows: "Congress is so strange. A man gets up to speak and says nothing. Nobody listens - and then everybody disagrees."

There is also a myth that goes around that government can do the job cheaply because it doesn't have to make a profit. Well, unfortunately, we all see the wisdom to these points and how we must move to deal with them.

The prosperity of this country is reflected when business and government work together for the benefit of the citizens. That's right, business and government or as economists like to say "private and public sectors".

For the past 100 years or more, Indians have had a special relationship with the federal government. Are you interested in making as much progress in the next hundred years as you have made since the 1880's. Certainly your expectations are higher than that.

To create jobs anywhere you must understand economics and the competitive market system. Business is out to make a profit, to get a return on its investment. People are in business to make money. Many tribal enterprises have failed because they have ignored that basic fact.

If you are to compete in the market system for jobs and industry, you must understand what business is looking for and then be prepared to market what you have versus other communities. You must realize that to attract industries (if that's what you want to do) you are now in competition with the rest of rural Arizona and a good part of the Southwest and the West.

What are some of the positive factors of locating on an Indian reservation:

1) No taxes, at least no property taxes
2) Abundant supply of labor. . . most reservations have an ample supply of unskilled labor
3) Location, in some instances tribes have an excellent location to highways or growth centers
4) Natural resources, a few tribes have an abundance of natural resources

O.K. those are the positive factors. Now let us look at the other side of the ledger.

1) Unskilled labor supply also means to many an undependable labor supply
2) Uncertain government structure, non-Indians quite legitimately complain that they cannot get decisions from tribal councils and there is extensive turnover of elected officials
3) Many non-Indians are concerned with their legal standing on reservations and who will have jurisdiction if disputes arise.

I have yet to meet a tribal official who did not think that it is important to create jobs on their reservation. Therefore, I would recommend the following steps to any tribe:

1) Develop a plan for economic development. What are your assets and liabilities: Start small and work to bigger accomplishments. Establish a track record. You can no more build a shopping center in Peach Springs than you can drill for oil in Prescott. What are your people willing to accept. They may prefer the status quo.
2) Develop closer ties with agencies and groups geared specifically for economic development. The Arizona Association for Industrial Developers is a group of experts in attracting industry.
3) Develop a marketing strategy. This is a competitive market. People who come to you are suspect. Most small communities in Arizona would give their eye teeth for a small, job producing company. You are going to have to sell you and your people.

Now let's discuss the potential problems or better said...opportunities if you have the assets, such as natural resources to attract job creating industries.

A recent article in the Economic Development and Law Center Report (January/February 1980) outlines the problems associated with development on tribal lands.

Unless tribes take the initiative in directing, coordinating, regulating, and controlling the sue of reservation resources, millions of additional dollars can flow onto the reservation without having any greater impact on their economies than in the past. If there is the potential for natural resource development, tribes must recognize that mainly capital-intensive extraction results in export by private, out-side companies. These companies are attracted by profit and concerned with cheap labor and materials. When leasing tribal land to outside interests, whether agriculture or grazing, allotment lands encourage leases to non-Indian farmers. The development of industrial parks and wooing of outside interests to reservations is no panacea, but it a potential direction. Tribes must be fully aware of the impacts in form of direct payments (rent and royalties) which miss out on multiplier effect and opportunity to learn management skills/develop reservation economy. Purchasing power is siphoned off reservation and the border communities benefit from external economies rather than tribes.

Government policies have an obvious lack of coordination among programs. Economic development programs address only one aspect of the problem (employment, training, infrastructure, planning, human service needs, or operating capital). The conflicting requirements often inhibit a comprehensive approach. Many programs are designed for poor in general population and do not consider the Indian land base potentials.

Other programs stress job development rather than ownership and operation. Government agencies discourage risk-taking, to protect the tribe from failure and loss and quite often do not understand business development and operation. The agencies have encouraged leases for income and jobs.

Human and Community Service Programs do not contribute to Economic Development.

1) HEW, HUD, EDA, and FMHA programs provide services but do not encourage tribes to become providers.
2) Non-Indian (Health professionals, hospitals, medical equipment and supply companies) receive the financial gain and business growth.
3) There is no encouragement or support for the development of Indian construction or building supply companies while there are millions of dollars for Indian housing construction and rehabilitation.

Vocational Programs not designed for reservation economies:

1) Small businesses employing only a few are overlooked in favor or large businesses employing many.
2) Vocations characterized by self-employment are overlooked.
3) Individuals trained in these programs are frequently unable to find jobs on the reservation.

There are also a number of other factors inhibiting economic development:

1) Lack of collateral: Lower individual net worth than general population, trust status of land, joint-ownership of chattels
2) Security on loan is limited to the project financed.
3) Tribal jurisdiction over civil matters preclude foreclosure or attachment in default of loans.

What direction should the tribe choose? Here are some ideas:

1. Reservation might become a planned economy
    a. Concurrent growth in a diversity of economic sectors
    b. Functional interdependence among sectors
    c. Capital accumulation for continued reinvestment

2. All development must be viewed with entire reservation in mind.

    a. Increase multiplier effect with reservation produced goods and services
    b. Develop qualified labor force
    c. Tribal compensation for start-up costs and inefficiencies
    d. Attract off-reservation market for tribal goods and services

Strategies

1. Natural resource development through joint-ownership and control of extraction

    a. Tribal membership on policy board

2. More favorable lease and royalty agreements

- *a. Time limits for development*
- *b. Compensation for infrastructure improvements*

3. Capture external economies

- *a. Excavation and construction on-site*
- *b. Road construction and maintenance*
- *c. Lease warehouses and office space to companies*
- *d. Workers homes and retail services located on reservation*

Tribes might also consider development of Light Industrial and Commercial Businesses.

1. Joint venture with an outside company

- *a. Opportunity to learn ownership and management responsibilities*
- *b. Outsiders still have vested interest to make sure business operates efficiently*
- *c. Eventual increases ownership share and management responsibilities*
- *d. Tribe can generate OJT, plus EDA and CDBG funds for on-and-off site improvements as its initial contribution.*

2. Leasing to an outside company

- *a. May be worthwhile if tribe is not ready to manage business but needs the business as a catalyst or link to existing tribal business*
- *b. Tribe still has latitude to include provisions to maximize economic impact.*
  - *1) Employment preference*
  - *2) Participation on company management committee*
  - *3) Subcontracts for Indian services*
- *c. Lease should provide for periodic adjustments in rent or even an initial period of rent abatement to compensate for start-up costs.*

3. Development of Service Businesses

- *a. Indian Self-Determination Act and Indian Health Care Improvement Act allows tribes to contract directly with the government for services and receive Medicare and Medicaid entitlements.*
- *b. Establish construction companies to build on reservation and bid for off-reservation contracts*

And finally we must realize as President John F. Kennedy once said: "Our task now is not to fix the blame for the past, but to fix the course for the future."

Thank you.

MR. CLINTON PATTEA, MODERATOR, INTRODUCED DR. EDD F. BROWN, DIRECTOR, OFFICE OF INTERGOVERNMENTAL OPERATIONS, DEPARTMENT OF ECONOMIC SECURITY: "DES PROGRAMS AVAILABLE TO INDIAN TRIBES"

My name is Edd Brown and I am representing the Arizona Department of

Economic Security. The purpose of DES is to provide opportunities, services and programs through a variety of service delivery systems to enable all Arizonans experiencing economic and social difficulties to improve their life situations. This is accomplished through three major divisions within DES: Division of Aging, Family and Children's Services; Division of Developmental Disabilities; and, Division of Employment and Rehabilitation Services.

In another recent Town Hall meeting report on State-Indian relationships, it was stated: "In order to achieve resolution of any issue in a way that gives all participants a feeling of justice done, both Indians and non-Indians must approach each other with mutual respect and the realization that ultimately, the future of Arizona is our shared concern." It is this thought, or philosophy, that has provided the base for DES' approach, under direction of Bill Jamieson, Jr., in the working with Arizona Indian tribes. In 1979, I was hired as Director of a new office--the Office of Intergovernmental Operations--with primary responsibility for working with various local governments including counties, cities and towns, Indian tribes and also community organizations.

The purpose of my presentation here today is not to sell social services to Indian reservations but to make you aware of services which are available to Indian people and of the cooperative agreements which DES has entered into with Indian tribes to assure that services are being delivered to Indian communities.

The guide for the delivery of DES services to Indian tribes is that Indian individuals are eligible for assistance under any federally administered social services program or any state program financed with federal funds (AFDC, Food Stamps, Unemployment Insurance and others) if they meet the eligibility criteria for services. Service agencies established to serve Indians only (BIA, IHS) are viewed as residual in nature and will not serve Indian individuals unless federally-funded state service possibilities have been exhausted. This, I believe, will cause some problems in the near future, but because of time limitations, I will not specifically address this concern here today.

With the exception of services which involve the licensing of facilities or the legal jurisdiction over individuals, DES services to individual residents on reservations should be essentially the same as those provided to other Arizona residents of rural communities. Since the inception of DES in 1973, the Department has been striving to meet this challenge. Major services and programs are delivered directly by the state or through intergovernmental agreements or contracts to reservations. Let me briefly review what they are.

1) JOB SERVICES: DES Job Services assist job seekers to find employment and employers to find the workers they need. Full-time Job Services offices are maintained at San Carlos, Oraibi, Sacaton and Parker. Residents of other reservations are served on an itinerant basis--one day a week, or must seek services at nearby off-reservation offices such as Kingman, Winslow, Flagstaff, Holbrook and others.

2) COMPREHENSIVE EMPLOYMENT & TRAINING ACT PROGRAMS (CETA): DES contracts with five Arizona tribes (Gila River, Hopi, Navajo, San Carlos Apache and White Mountain Apache) for CETA Title II-B training funds. Title II-B allows grants to state and local governments for comprehensive manpower services such as recruitment, testing and placement services; classroom and on-the-job training/ work experience programs; supportive services needed for persons to participate in employment or training programs; all of which are for the economically disadvantaged who are either unemployed or underemployed. Contract amounts for October, 1980, through September, 1981, with tribes total $2,086,700. A portion of that is allocated to the Indian Development District of Arizona which administers CETA programs for nine smaller tribes. The specific allocation amounts to tribes are based on the number of adults in poverty. It should be noted that there are other CETA programs in which tribes receive direct funding from the federal government and serve as prime sponsors within their respective reservations.

3) INCOME MAINTENANCE: Aid to Families with Dependent Children (AFDC) and Food Stamps are available to all eligible applicants on Arizona reservations. The purpose of AFDC is to provide financial assistance to families with dependent children deprived of a normal family life and support through death, absence, divorce or disability of one or both parents. The purpose of the Food Stamp program is to safeguard the health and well-being of the population and raise levels of nutrition among low-income families.

Presently, DES has full-time Family Assistance units on three reservations --Papago, Navajo and San Carlos Apache. DES is currently in the process of establishing a Family Assistance unit on the Hopi and White River reservations. Itinerant services are provided to most Indian communities.

In July, 1980, a preliminary agreement was signed by the Navajo Nation and three states--Arizona, New Mexico and Utah--which provides authorization by the three states to delegate certain Food Stamp Program responsibilities to the Navajo tribe. It is a planning document which will assist the Navajo tribe to begin implementing its own Food Stamp program in cooperation with DES. Upon implementation of the program, the Navajo tribe will administer the program, determine eligibility, provide food stamp benefits and generate reports to the United States Department of Agriculture. The Department of Economic Security, as lead state in this project, will be responsible to provide quality control review, management evaluation and monitoring. If the two-year project is successful, the agreement may be extended. It is hoped that if the project is successful, the state can work with other tribes if they desire to develop their own food stamp programs on reservations.

4) VOCATIONAL REHABILITATION SERVICES: The state of Arizona offers the only vocational rehabilitation services in Arizona. Neither tribes nor the Bureau of Indian Affairs operates any VR services--with the single exception of the Navajo. The purpose of these services is to enable the physically and mentally disabled who are unemployed or underemployed to function more effectively as part of the labor force and gain employment dependent upon their abilities and goals.

The Navajo tribe, under a pilot project with the assistance of DES, had operated its own vocational rehabilitation services for three years. The DES Division of Rehabilitation Services and the Navajo tribe, under Title I, Part D of the Rehabilitation Act, initiated the first direct grant with the federal government and an Indian tribe for the delivery of services by the Navajo Nation. This was effective October 1, 1979, through September 30, 1980, and DES Rehabiliation Services worked closely with the Navajo tribe in the provision of technical assistance.

The grant that funded this project has now terminated and supposedly, the tribe will get direct federal funding as soon as appropriations are passed by *the Congress. There is $650,000 to be designated for Indian tribes. It remains to be seen if the funds will be appropriated. In the interim, DES has a cooperative agreement with the Navajo tribe. The tribe is furnishing administrative money for its rehabilitation program; the state is furnishing the funds to take care of the clients under the Navajo Rehabilitation Program.*

If the federal funds do not come through for direct funding to tribes, it is likely that the state will have to serve the Navajo clients from its District III office. If this happens, it puts four years of work and the Navajo Vocational Rehabilitation program in jeopardy.

5) TITLE XX: This is a state entitlement based on population that can be drawn only when a 25% match is provided by the state. It is to provide such services as casework, housekeeping, home management, information & referral, day care, protective service, adoption and shelter care. Each Arizona reservation is designated a Planning and Service Area for Title XX. The state sets aside Title XX funds for distribution to tribes based on a factor of Arizona's Title XX allocation. Of Arizona's approximately $27 million entitlement, $2,078,133 has been allocated to Indian tribes for the period October 1, 1980 to June 30, 1981. A base amount of money is made available to each tribe regardless of size; additional amounts are allocated to each tribe based on population.

DES has and continues to support the efforts of the Inter-Tribal Council of Arizona to amend Title XX to allow direct allocation of social services monies to federally recognized Indian governments.

6) 1115 GRANT: In 1977, DES was awarded a three-year grant entitled "A Demonstration Model for a Tribally Controlled and Operated Social Services Planning System." This project was carried out by the Inter-Tribal Council of Arizona under contract with DES. The primary goal was the development of tribal capacity to plan, develop and operate social services programs. This capacity-building project has inspired a high level of tribal-state cooperation.

Recently, an application was made for another 1115 grant entitled "The Establishment for Arizona Indian Tribes of a System of Entitlements to Title Funds of the Social Security Act Allocated to the State." If this grant is approved, it will maintain the momentum of the initial grant but its main objective would be the waiver of the requirement of 25% local match for Title XX by Indian tribes.

We understand, at this point in time, that the application is being received favorably and it appears there is a good chance of having it approved. However, given recent changes in the political system, it is still uncertain.

7) DEVELOPMENTAL DISABILITIES: This program provides intake service, case management, diagnostic and therapeutic assistance and home training for persons with autism, cerebral palsy, epilepsy or mental retardation. Services are provided to reservation residents at state-operated DD facilities. Consultation is also available to reservation groups for the development of programs to serve this target population. This consultation can be obtained through the local DES District Office Program Manager for Developmental Disabilities. The Division of Developmental Disabilities also contracts directly with reservation programs to provide services to DD persons.

8) OLDER AMERICANS PROGRAMS: The DES Aging & Adult Administration receives Title III Older Americans funds for Arizona Indian reservations which are passed through Area Agencies on Aging. Title III funds would encompass such services as: Homecare, legal, outreach, information and referral, adult day care, social services, congregate meals and home-delivered meals.

Because of a change in federal regulations, commencing September 30, 1980, the Inter-Tribal Council of Arizona was designated as the Interim Indian Coalition area agency on aging and assumed the responsibility of administering OAA funds to all tribes in the state except the Navajo Nation. DES has assigned a staff person to assist ITCA in the administration of the Indian Coalition. Ten tribes receive OAA funding. There are nine tribes in the state who never had OAA funds; a few of these have gone into Title XX to serve their elderly population. The state and Interim Indian Coalition will work with these tribes on planning and needs assessments for their elderly population.

For a number of years, the Navajo Tribal Council has been faced with the difficult task of providing services to their elderly members in three separate state jurisdictions--Arizona, New Mexico and Utah. This situation often ended in duplication of services. Recently, after a successful conclusion of negotiations, the Navajo Nation was designated as the Interstate Planning & Service Area to have full responsibility for the planning and delivery of services to its elderly members. Again, the Arizona DES has been named lead state agency. Funds normally used by New Mexico and Utah under the OAA to serve Navajos on the reservation are now transferred to the state of Arizona to assist in putting the Navajo aging plan into operation. As lead state, Arizona will provide program and fiscal monitoring and give technical assistance as needed.

Overall, Indian tribes and respective Indian organizations have been awarded some 54 DES contracts for $4,437,657. The Navajo Nation, in its nine contracts, receives $2,923,601 of the monies in this total. All other tribes combined receive $1,218,373 through 41 DES contracts. Four Indian organizations have 4 DES contracts for $295,683.

As stated earlier, the services to individual residents on reservations should be the same as those provided to other Arizona residents, except in two instances:

1) *When state services involve jurisdiction over individuals or programs on the reservations; and*
2) *When services involve the licensing of facilities on the reservation.*

Both deal with tribal-state jurisdictional issues.

Major areas of concern caused by the above are:

1) *Indians employed with independent businesses on the reservation are being denied unemployment insurance coverage. While tribal councils seem eager to participate in the Unemployment Insurance Program, other reservation-based employers have been reluctant to do so and tribal councils have not required that they do. As a result, wage reports on employees are not submitted and employment taxes to the*

state are not paid, making individuals ineligible for UI. The state has no power to enforce submission of wage reports and collection of taxes on reservations. It should be pointed out, however, that reservation employers do pay full federal taxes for unemployment insurance.

2) AFDC-FC eligibles placed by tribal agencies in reservation homes are unable to receive state funds because interpretation of state law recognizes only state standards for licensing. In the past, the state's Attorney General has ruled that funds under the state's control cannot be used to support child placements unless the facility and the child placing agency have been licensed by the state. Therefore, the State of Arizona did not provide nor finance child welfare services on Arizona Indian reservations.

Tribal standards were not recognized by the state. In the past, tribes had to be subjected to state standards; the tribes, however, did not wish to be subject to the state's standards.

Many state program people, Indian and non-Indian, felt constrained by the interpretation of state laws particularly when in conflict with federal guidelines.

3) In regard to protective services, the state has no authority on reservations. State DES workers cannot come on reservations to investigate or remove individuals from their residences. The tribes do not recognize state authority.

4) In the same regard, a single spouse with children cannot collect child support from individuals living on a reservation because the state cannot enforce collections on reservations.

The above represent major concerns which are being addressed by DES. Changes in law at federal level concerning funding and delivery of social services have put greater pressure on the state to seek solutions to the above by integrating these changes within our state system while at the same time recognizing and respecting the unique status of Indian tribes within Arizona.

I would like to take a few minutes to talk about the Indian Child Welfare Act and the Department's efforts to implement the Act. The intent of the Act is clear. Its purpose is to reduce the destruction of Indian families and communities caused by the removal of children from their homes and environment. A number of measures are proposed in the Act to accomplish this purpose, namely:

Expanding of jurisdiction of Indian tribal courts in regard to child custody care;

Requiring non-Indian courts to observe stricter standards in placing Indian children;

Placing Indian children in Indian homes whenever possible; and

Funding tribal programs to provide supportive services to families and children.

Because the Indian Child Welfare Act represents a major shift in the attitude towards jurisdictional rights and right of self-determination over family matters and gives to tribes control and responsibility they have not had in the past, it is natural to expect mixed reactions to the Act. Many states were concerned that the Indian people are not ready to take care of their own; that in the final analysis, the states would still be forced to take jurisdiction over Indian children. Then, many states have balked and refused to act until all loopholes are settled in court. Tribes, too, have feared they did not have the stability and systems to deal with this new responsibility. They are concerned that the state would abdicate its responsibility without allowing the tribes time to prepare to take on this new activity.

DES, which has responsibility for children, youth and family programs, including foster care, child protective services and adoption, has made it very clear that it is the desire of the Department to implement the intent of the Act rather than to begin to test the constitutionality of the Act.

Over the past year, DES has made major progress in implementing the Act. A full-time Indian Child Welfare Specialist was hired; each tribe in Arizona was visited on an individual basis to make clear what the specific role of the state would be in the Act and what mechanism the state had developed for the notification of tribes of Indian children in state custody; the number of Indian children in state custody was identified--a total of 196 Indian children are under state jurisdiction.

The next step was to identify within the Department and its corresponding divisions, how information regarding Indian children would be recorded for use as a referral form to tribes to determine eligibility for membership in a tribe; from this a child information sheet was developed with the input of tribes.

A team was then formed consisting of representatives from the Department's Office of Intergovernmental Operations; Children, Youth & Family Administration; Attorney General's office; and Bureau of Indian Affairs. Meetings were then set with each tribe and upon completion of the visits, a resource manual was developed to familiarize state personnel as to the process to follow; each of the individual tribes' notification processes; and, to identify the state and tribal judicial officials. Workshops were set up throughout the state for state personnel and tribal members.

Now that a trust and cooperative relationship has been established between the state and Indian tribes, DES is beginning to work with those tribes which have developed a mechanism to determine eligibility and possible transfer, juvenile codes and child welfare or foster care standards for placement to develop intergovernmental agreements as outlined in the Indian Child Welfare Act. The state is now looking at who pays, state recognized tribal standards and licensing.

In conclusion, it should be pointed out that there is no tribe in the state known to be pursuing any course for increased state jurisdiction. In the area of social services, it has been stated by all tribes that priority is for direct funding rather than through the state; this is DES' priority as well. It should be pointed out that recent federal legislation would also appear to support this priority. For example:

1978 amendments to the Rehabilitation Act allow direct federal funding to tribes;

1978 Indian Child Welfare Act--tribal courts and standards must be recognized by state;

1978 amendments to the Older Americans Act of 1965 allow direct funding to the tribe;

1980 Adoption Assistance & Child Welfare Act allows payment to Indian tribal organizations.

However, little or no funds have been appropriated for the implementation of these pieces of legislation. This then makes it necessary for the tribes to continue to be dependent on the state for financial support for the above services.

DES, in its attempts to provide quality services to all of its citizens, has shown its good faith and commitment to address tribal-jurisdictional issues in the hope of providing a more efficient and coordinated system for the delivery of social services. Although some issues may require state appropriations, some issues may be addressed through intergovernmental agreements. Organized attempts are being made through the DES Office of Intergovernmental Operations to improve communications and problem-solving processes between DES and tribal governments.

Thank you for inviting us to participate in the 8th Annual Indian Town Hall. It has been a pleasure to be with you today.

MR. CLINTON PATTEA, MODERATOR, INTRODUCED MR. ELLIOTT HIBBS, DIRECTOR, STATE DEPARTMENT OF REVENUE: "STATE'S INTERPRETATION OF CIGARETTE AND SALES TAXES"

There is a principle in this country that Indians should largely be left to govern themselves, free from state interference. The Arizona Department of Revenue has no quarrel with that principle and in fact, we support it. However, we also recognize there are often times mutual needs and goals that require cooperative efforts between the state and tribal communities.

It has often been left to the courts to resolve the areas where both the state and tribes have needs that conflict. So it has been for state tax laws. Today I want to briefly cover the principles which underlie how state tax laws impact on tribal Indians and Indian reservations and then review three recent U.S. Supreme Court decisions which have caused further evolution in state and tribal relations.

Historically Indian tribes were once completely independent and sovereign nations, and their claim to sovereignty long predates that of our Federal government. However, Indians today are American citizens. They have the right to vote, to use state courts, and they receive some state services, such as tax monies for education and welfare. But it is nonetheless true, as Justice Marshall pointed out, that Indian tribes living within the borders of the United States and Arizona were and always have been regarded as having a semi-independent position when they preserve their tribal relations; not as *states, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations. They have thus far not been brought under the laws of the union or of the state within whose limits they reside.*

State laws generally have not been applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that the state laws shall apply. With this principle in mind, it is clear that Indians and Indian property on Indian reservation trust lands are not subject to state taxation, except by virtue of authority conferred upon the states by an act of Congress. Therefore, in determining whether a state tax law applies in a particular situation the courts have looked at the Indian sovereignty doctrine as well as the applicable treaties and federal statutes which define the limits of state power.

Over time notions of Indian sovereignty have been adjusted to take account of the state's legitimate interest in regulating the affairs of non-Indians. Three recent Supreme Court decisions further clarify the limits within which a state action infringes on the right of reservation Indians to make their own laws and be ruled by them.

These three major U. S. Supreme Court decisions related to the applicability of state cigarette and sales taxes to transactions which occur on Indian reservations. I want to discuss each of these cases and then I will summarize for you at the end how these cases have affected the course of state and tribal interaction here in Arizona.

The first case handed down was that of Washington v. Confederated Tribes of the Colville Indian Reservation which was decided on June 10, 1980. The major holding in this case was that the state of Washington could continue to impose its state cigarette excise taxes upon non-Indian purchasers of cigarettes from Indian tribal smoke shops located on various reservations within the state. The fact that the Indian tribes had also imposed their own tribal taxes upon cigarette purchasers did not operate to preempt the continued application of the state taxes. The court held that, since the legal incidence of the state cigarette tax was upon the non-Indian purchaser and since only non-Indians would benefit if an exemption were allowed, the state tax was neither preempted by federal or tribal law nor did it constitute an interference with the right of tribal self-government, even though an Indian vendor was required to collect the tax and remit it to the state.

There were two other principles important to note from the Colville decision. First was the court's ruling that insofar as state tax laws are concerned, Indian immunities are tied to tribal affiliation. Stated otherwise, unless the Indian who is being affected by the state tax law is a member of the tribe for whose benefit the particular reservation was created, no blanket immunity exists. This means that Indian immunity from state tax laws does not exist for the Indian who leaves the reservation and is either assimilated into the general community or settles on a reservation that was not established for that particular Indian's benefit. Of course, if other reasons for exemption exist, such as a non-tribal member Indian operating as a federally licensed Indian trader, those exemptions would continue to be recognized.

The second principle which arose from the Colville case which only indirectly affects the state but is nonetheless significant involves the power of Indian tribes to impose tribal taxes upon non-Indians conducting on-reservation activities. The Supreme Court's decision states that the tribes possess this abstract power, but a question has arisen to the source of the power. Two cases which address this question are now pending before the U.S. Supreme Court and it appears the source, nature and scope of tribal taxing authority over non-Indians will soon be more clearly defined by the high court.

The second U.S. Supreme Court decision handed down this summer was Central Machinery Company v. Arizona State Tax Commission which was decided on June 27, 1980. In this case the court held that the Arizona transaction privilege tax or sales tax could not be imposed upon a non-Indian farm equipment dealer located off the reservation with respect to the sale of tractors to an Indian tribal enterprise on an Indian reservation. The solicitation for the order, placement of the order, delivery of the tractors and payments for the machinery all occurred on the reservation. While the farm equipment dealership did not possess either a federal trader's license or a federal itinerant peddler's permit as required by federal law, the majority of the court felt that the state taxes in question were impermissible anyway because (1) the purchase order was approved by the representative of the Bureau of Indian Affairs, and (2) the area of engaging in the business of Indian trading on such reservations had been federally preempted.

One of the remaining unanswered questions with regard to how extensively the decision in this case will be applied is whether or not business activities other than the retail sale of goods and merchandise by non-Indians to reservation Indians has been preempted. A recent lower federal court ruling held that the preemptive reach of the federal Indian trader statutes do not extend to non-Indian contractors who construct buildings or similar improvements for Indians on reservations. It is anticipated that a request will be made to the U.S. Supreme Court to review this lower court decision and, again, to further clarify what is or is not a legitimate exercise of state authority over one of its non-Indian residents.

The final Supreme Court decision which was also handed down on June 27, 1980, was White Mountain Apache Tribe v. Bracker. Here the majority of the court held that the federal forestry statues and code of federal regulations preempted the application of Arizona motor carrier and use fuel taxes to the operations of a non-Indian Oregon corporation that hauled logs under contract with an Indian tribal enterprise upon roads wholly within the Fort Apache Indian Reservation. The court held that, since the state had not demonstrated a sufficiently compelling interest in imposing the taxes in question, this, coupled with the fact that the state neither built, maintained nor repaired the roads over which the log hauling took place, prohibited the tax. The majority decision emphasized that there is a significant geographic component to tribal sovereignty which is crucial to the question of whether a state law is to be preempted. In finding that all of the non-Indian's activities took place on the reservation, the court held that the Indians' exercise of their powers of self-government would be eroded if the taxes were permitted.

The foregoing cases provide several principles of law which will undoubtedly guide the future course of state/tribal relations with regard to matters of taxation in Arizona. These principles may be summarized as follows:

1. Assuming the inherent power of Indians to impose tribal taxes upon non-Indians, such tribal taxes do not automatically preempt parallel state taxes upon the same non-Indians;

2. Reservation Indian immunities from state taxes seem to be tied to membership in the tribe for whose benefit the geographic reservation was created;

3. It is the existance of a federal regulatory scheme, rather than the enforcement or non-enforcement of the scheme, that operates to preempt conflicting state laws;

4. The question of Indian immunities and exercise of powers of tribal self-government has a significant geographical component which should be analyzed in determining whether state authority has exceeded the permissible limits.

As I indicated, numerous issues remain to be resolved. Perhaps the most that can be said at the present time is the U.S. Supreme Court recognized the continuing rights of the states to tax non-Indians upon activities where significant state interests are affected, unless there is a perceived federal or tribal objective which would be thereby frustrated.

Now let's take a look at how the Arizona Department of Revenue is going to implement these U.S. Supreme Court decisions and how the principles defined in these cases will change who and what has been taxed in the past. Let me break this down as to how cigarette and sales taxation has been affected for non-Indian vendors on the reservation and then I'll discuss how the new interpretations affect Indian vendors on the reservation.

First, non-Indian vendors. Sales of cigarettes to non-Indians by non-Indian vendors on the reservation are now considered by the Department of Revenue to be subject to cigarette and sales taxes. Sales of cigarettes by the non-Indian vendors to Indians for whom the reservation was established would still be exempt from state taxation. Prior to the Colville decision, the Department had considered all sales of cigarettes that took place on the reservation whether sold by a non-Indian vendor to non-Indians or not to be exempt from cigarette tax.

To implement this new position, we are presently procuring a list of licensed Indian traders and we will require the non-Indian vendors to purchase their cigarettes for sale with state cigarette stamps already affixed on all cigarette packages. Money would be refunded to the retailer on that portion of the sales of cigarettes which are sales to reservation Indians. The preliminary work on implementing this new position will be completed by December 1 and it is anticipated that the non-Indian vendors will be required to begin selling stamped cigarettes by January 1, 1981.

As far as the sales tax is concerned, non-Indian vendors on the reservation are not affected by the new Supreme Court decisions. Sales to Indians will still be considered exempt and sales to non-Indians will still be considered taxable, just as they have been considered taxable in the past. The only difference in the sales tax area, will be where vendors not located on the reservation conduct some portion of their business activity on the reservation. Generally, the Department will consider sales to Indians on reservations by off-reservation vendors exempt from the sales tax if all of the following conditions are met:

1. The Indian purchaser must be an enrolled member of the tribe for which the reservation was established;

2. The vendor must hold an itinerant peddler's permit, an Indian trader's license issued by the Bureau of Indian Affairs or the transaction must be subject to federal regulation under the Indian trader statutes or regulations;

3. The essential elements of the transaction must occur within the limits of the reservation; i.e., the order must be place on or from the reservation; delivery, acceptance and transfer of title must occur on the reservation; and, payment must be received on or from the reservation;

4. Only sales at retail of goods and/or merchandise are exempt;

5. The vendor's records must show an accurate and documented accounting of sales claimed as exempt.

That covers non-Indian vendors. Now let me cover how the court decisions affect Indian vendors. Generally Indian vendors on the reservations in Arizona were not affected by the recent Supreme Court decisions. While the Colville decision allowed states to require Indian vendors to collect the cigarette tax on sales to non-Indians on the reservation, Arizona law does not presently allow it. In the state of Washington, the cigarette tax was required to be passed on by the vendor so that the ultimate burden fell on the purchaser. However, in Arizona the cigarette tax is the responsibility of the vendor and there is no requirement that it be passed on to the consumer. When the vendor is an Indian, federal preemption and Indian sovereignty take over and no tax applies.

It should be noted that inquiries have already been made to the Department on what changes are needed in the law so that any non-Indian purchaser of cigarettes would be reuqired to purchase cigarettes having the state cigarette tax paid. It definitely appears this issue will come before the legislature at the next legislative session. However, until a change is made in the law, it is the Department of Revenue's position only non-Indian vendors of cigarettes will be required to sell cigarettes to non-Indians with the state tax paid.

As far as the application of the sales tax on Indian vendors on the reservation, again, nothing has changed. The Arizona sales tax is a tax for the privilege of doing business in Arizona and is applied to the vendor. As sales by Indians are exempt, irrespective of to whom the sales are made, Indian vendors on the reservation are not required to be licensed nor to collect and remit state sales tax to the Arizona Department of Revenue.

As the issues which remain to be decided proceed through the courts, it is anticipated that the positions and policies of the Department will change accordingly. However, it is hoped that a period of better understanding can be encouraged between the tribes and the state without the need for litigation, with each recognizing the needs and objectives of the other as well as the limits of their powers respectively exercised. This will lead as well to an era of greater cooperation and lesser confrontation.

LUNCHEON: MS. YVONNE LYNNE GARRETT, COMMISSION MEMBER, INTRODUCED THE HONORABLE ARTHUR J. HUBBARD, SR., ARIZONA STATE SENATOR: "AN INDIAN LEGISLATOR'S VIEWS ON STATE-TRIBAL RELATIONS"

I'm thankful to the Commission for giving me this opportunity to share with you a few of my observations. I have had the chance of working and have observed tribal operations on every reservation in this state. I have actually served on only one reservation as an employee...which was the Navajo Reservation. But I have had the opportunity as coordinator of the Indian Development District of Arizona, of observing tribal operations on all other reservations in the state. It has been my privilege to have served eight years in the State Senate and observed state government from the city governments through counties and up to the governorship level of the state.

I am thankful I can share with you what I think might be workable situations, as far as developing understanding or coming to agreement on the various issues that generally develop confrontation between tribal governments and state governments.

First, I would like you to know that I may be biased, because I am an Indian first, and only secondly have I tried to develop within myself something of the philosophy that exists outside of reservations. To me, there are two philosophies here in this state, one which exists on reservations which is a philosophy developed by the need of survival of the Indian people, and that is a philosophy of "all for one and one for all." That philosophy is strongest within the family group. The father, mother and the children have to survive in order to have a continuation of the Indian people. It extends in a diluted form to the clan where the clan exist in the different reservations. It is further diluted as it extends to the reservation as a whole...it stops there. You might have another Indian Tribe living right next to you, but you don't carry your "all for one and one for all" philosophy into that group. That is something that non-Indians have never understood. And that is why there is so much misunderstanding. It causes misunderstanding between the Indian and the non-Indian.

Off-reservation, to me, is the business world, and it exists through all the business activities of the non-Indians living in these United States and is the philosophy of free enterprise, which has its two main gods... money and time. I have never been able to develop a happy medium between the philosophy on reservation and that of off-reservation. So in order to get myself in a position to participate in one side or the other, when I cross the reservation line from my home in Ganado, I say to myself "stop thinking in terms of good relationships with your fellow-men, and think in terms of money and time". When I leave Phoenix and go back to the reservation, I say to myself "forget about money and time and think in terms of your relationships with your neighbors, your fellow men."

That is one reason why it is hard for people to understand one another. We are creatures of habit. We learn to think in certain terms, and we do not think in other people's terms when we go to dealing with them. And that is why there is need for communicating with people, groups of people and governments. I think that is one reason why our country came to such an unfortunate situation where we now have employees of our state foreign service in Iran now. We were thinking in our own terms here; our President was thinking in his own terms and not thinking what the terms of the people in Iran might want, so we now have that situation on hand. It also brings about the situation of one government going to court because the other government feels that its philosophy is the right one and that there are no others in existence.

There is a great need, I think, for economic development on Reservations. I mentioned to Mr. Vandenbosch that I would make a comment on one thing he said this morning. In his presentation, he mentioned that economic development or economics was ignored on the part of Indian people. I think, and I firmly believe, that should have been stated in these terms..."that the Indian is not fully knowledgeable of the term 'economics'". The non-Indian thinks we Indian people know about the action of money. That is one assumption on the part of the non-Indian that is incorrect. Indian people do not know what money can do. They know that you keep it in your pocket, you spend it for food, you spend it for your needs, like clothes and other immediate needs, but to actually make that money earn money, not even I have that conception. I have an inkling of what it might be, but to actually put it in operation, to actually make money earn money, I don't have it.

It is ironic that back in 1912 it was an Indian who developed the Federal Reserve Banking System, but from that time to now there has not been any other Indian who has had the knowledge of the working of money to develop any kind of action which would actually show that they knew what money can do. This is something that I believe needed for a better discussion between Indian and non-Indian, especially if we are going to have economic development on the reservation and provide a means for the pursuit of happiness by people on the reservation. There are so many other things that come into play that contribute to economic development, that it takes a whole lot of effort to bring people from where they are, without any understanding of money, to the present level to be competitive in the present level of our business world...in the business world of the United States. You have to have trained individuals, and trained individuals takes discussion between skilled people and non-skilled people. The unskilled people have to have a level of understanding of the language that the skilled person is going to be talking to them in. They also have to have a certain amount of pride in themselves so they can be open-minded and willing to listen to the person who is going to teach them.

For the longest time the Navajo people went out to work away from the reservation. They were asked "what can you do?". Their first answer, "I can do anything." The reason for that was the Indian, because of not having a written language, had to develop his memory capabilities, which is a terrific talent.

As an illustration, the Navajo Medicine Man goes through a process of learning two or three years, memorizing the songs, the formula of prayer, and memorizing everything that goes towards his performing a ceremony and a prayer, so that he can instill in the individual that he is performing the ceremony for the capability of bringing about a mind situation, so that the person begins to feel well and his body can go ahead and mend itself. According to psychologists, that talent is the same capability as memorizing the whole Bible and being able to start anywhere in it, continue on to finish it, or go backwards and repeat what is written.

Therefore, the young man who goes out to look for a job, says, "I can *anything". He is sure that he can operate a machine or whatever kind of work he is asked to do, and it takes just one demonstration and he is capable of going ahead and doing the work. This has never been taken advantage of by our school system; I don't know what it is that is lacking with the educational process, but it has never fully taken advantage of that capability of the Indian. Here and there, because of that memory situation, that memory capability, a non-Indian gets the wrong assumption of an Indian's understanding.*

You asked me what I know about taxation, and I tell you I know quite a bit about it. If you begin to talk to me about it, I may not understand, but I know to use the words that the individual is using to speak to me, and that gives the impression that I really know what taxation is all about. The person that I am talking to assumes that I know a whole lot so he goes ahead and talks on the level I have no understanding of. This brings about a situation that when I go to implement what I know about taxation, I can't even get started. This is a situation that has to be brought out, and an understanding that can only be arrived at by a continued discussion between people and trying to think in terms about the understanding the other person might have about the subject.

While I think the Arizona Commission of Indian Affairs is doing a good thing by bringing the leaders here and having them discuss the various issues that might be at the forefront or would come up to a confrontation situation in the immediate future...I think it would be a great deal better if the Tribal Council members met with some of the members of the State Legislature (officials of Tribal governments meeting with their counterparts in the State government) trying to reach an understanding between one another. This would be much better. All it is now is the top echelon people meeting here, the State government officials making presentations and the Tribal Chairmen making presentations. There isn't that give-and-take discussion which is needed to bring about a closer working relationship. The jealousy and suspicion on the part of Tribal governments, as far as their sovereignty is concerned, and fear of erroding of that sovereignty is tremendous.

Their discussions should take place in an atmosphere where the Indian is not on the defensive. Most of our meetings between governments take place off Indian Reservations, so the Indian is not as open as he might be and and is already on the defensive and does not come to a discussion open-minded. Whereas, if it was on a reservation in an atmosphere where he is more familiar, he might have a lot more open-mindedness than he would have going off a reservation.

These are some of things that I have observed in my few years working in various places within the state. I don't feel that I have any knowledge of what Indians in other states may feel, but I do have, I think, considerable feeling and understanding of what the situation is here in our State of Arizona. Because the non-Indian is primarily concerned with money flowing in his direction, he is always going to take the law as a buffer to work in his behalf. You heard this morning that the Department of Revenue is going to follow the law, and the law says that they must implement taxation and collect all the money that they possibly can. The Indian, on the other hand, looks to them as an entity which has a lot of money. Their knowledge or awareness of the fact the money is coming from the individual's pockets within the area where the State government is carrying out its work, does not come into play as it should. I notice that even within the business world outside reservations, everybody looks to Washington to have more money coming from there, to take care of their needs. They use the excuse that it came out of my pocket and went over there, and now it should be coming back here.

Ideas that come to my mind are the need of a talking relationship between people. Individually, I think we find a lot of Indians having made good friends within the non-Indian communities. But that does not carry to the government where that individual comes from. The excuse of using laws as a means for not talking with people is one that I have observed very closely. People in the federal government in times back were mostly non-Indian, so when an Indian came into the office and said, "I have a situation like this out in my community and I can do such-and-such work if I have a little help from your office or have a little money from the federal government to get me started." The official would immediately say, "The law says 'no' we cannot do it. That's all there is to it." But I go and observe other places and a non-Indian goes into their office and says, "I need such-and-such to get started to do such-and-such activity and need to have a little help." The official says, "Well, the law says 'no', but we will see what we can do. Come in, in a day or two, and I will find out what we might be able to do to help you." So an alternative is developed to circumvent whatever the law says. But if an Indian, or a member of a minority group comes in, it is always "the law says 'no' and that's all the activity there is to it.

Wherever money is concerned, because it is the prime god of free enterprise, the non-Indian is very jealously guarding that money so that it does not lay idle so it does get returns. That comes to another problem with tribal governments on reservations. Money is not working on a reservation. There is no activity to make money make money. Money comes to the tribal governments either from royalties of the resources that are in the area, or else it comes from the federal government to assist in the social work that is needed on the reservation. So governments on reservations are not money-making situations. Governments off reservations, through their taxation, do bring in funds. When the funds get to the treasurer's office of the State government, the treasurer immediately gets that money into a situation where some interest is developing off that money. Reservations are not so well situated. Where federal government money is coming in, it is not allowed to be put into money making interest-bearing situations. So it is not very conductive to reservation governments to get that money into money-making situations. But all governments are spending entities. They know how to spend the money. As far as making money work, that is not happening, but they do spend money. So that is a situation where discussion between peoples is ncecessary, so that they understand what the other person really knows, and what his limitations are.

I don't want to talk too much and keep you here. You have some very exciting subjects to hear this afternoon. I do hope that you who are from the various reservations in this state, take the information you have received here back to the people on the reservation, not only to the other tribal officials, but to the people in general, because it is my observation that while tribal councils and tribal chairmen are expert in various subjects because they deal with those subjects most every day, the people *in general do not know about them, so they are not supportive of any action that councils of tribes take. When people are not supportive of the government officials, nothing happens. The government officials carry out a lot of activity on paper, but nothing changes at the grass-roots level. It stays the same. And it stays the same because the knowledge which these officials gain does not filter down to them so that they have some understanding of why they need to be supportive of the officials of the tribe and their government.*

With that, I would like to thank you for your kind attention and hope you have a greater understanding of the subjects you will be hearing about this afternoon, so you can inform your fellow men on the reservations. Thank you.

MRS. LEONA M. KAKAR, MODERATOR, INTRODUCED MS. CHARLEEN GREER, ASSISTANT ATTORNEY GENERAL: "RECENT SUPREME COURT RULINGS AFFECTING STATE-TRIBAL RELATIONS"

The Attorney General asked that I express to you his sincere regrets for not being able to attend the 8th Annual Indian Town Hall, but I'm really happy to be here again this year to share with you a few of my observations on the recent Supreme Court decisions regarding state-tribal relations.

I suppose I have to preface my remarks by saying that I am presenting one lawyer's view of the Supreme Court decisions, and as you could tell from this morning, every lawyer seems to have a different opinion. I am going to try to cut down my speech since it is so late, and I hope I won't talk too fast, and still make a little bit of sense.

As you know from this morning the major decisions by the U. S. Supreme Court in the last year regarding state-tribal relations were all regarding tax; state tax on cigarettes, general sales tax, motor vehicle use tax, that sort of thing. There are two Washington Cases that were consolidated in which the Court upheld cigarette taxes and struck down the motor vehicle use tax, and two Arizona Cases where the state tax was struck down. I might point out, if some of you don't know the Arizona Assistant Attorney General who represented the state on those two Arizona Cases, he is sitting right over there; of course he lost, you understand. He did a fine job, nevertheless.

The first case I would like to talk about is the Washington Case, and I don't want to spend much time on the facts. Basically, the State of Washington was levying a cigarette excise tax and a sales tax that was also on cigarettes, and then they levied what they called a motor vehicle excise tax on the privilege of using, in the State, any motor vehicle. There were four different tribes involved in the cigarette tax issues. They were heavily invested in selling cigarettes on the reservation, and the tribes made a fair amount of money from the sale of cigarettes. An important point to the Court, I think, was that the reason people came on the reservation to buy cigarettes was that they were much lower in price because at the time they were not paying state sales taxes. The Court went through some jurisdictional issues that would bore you even more than the rest of my speech is going to bore you, so I won't go into that.

The major Case the Court relied on when they made their decision allowing the State to tax cigarette sales on reservations to non-tribal members was, I'll probably pronounce it wrong, Ian, you can tell me, Moe v. Kootenai Tribes. What the Court said it was doing, and I say "what the Court said it was doing" because

I am not always sure the Court does what it says its doing, is apply the three principles from the Moe Case. I think they are important in order to understand what the Court was trying to do in this Case: 1) The State may sometimes impose a non-discriminatory tax on non-Indian customers of Indian retailers doing business on the reservation. 2) Such a tax may be valid even if it seriously disadvantages or eliminates the Indian retailer's business with non-Indians. 3) The State may impose at least minimal, whatever that is, burdens on Indian retailers to aid in enforcing to collect the tax. Therefore, said the Court, there is no automatic bar that would stop the State of Washington from extending its tax and collection and record-keeping requirements onto the reservation in this Case.

The first thing the Court said was that the tribe has the power to impose its cigarette taxes on non-tribal purchases, and as we found out earlier, there are two Cases pending now in the Supreme Court which will probably expand or help us understand their holding. But the major issue in the Case was whether when the tribe is imposing its own tax on a transaction and earning revenues from this sales transaction, does it oust the State from any power to tax this on-reservation transaction, and the answer was no. The Court totally rejected the tribes' argument that it was so deeply involved in sales and taxation of cigarettes that the State couldn't become involved. The Court said that primarily the tribes were making an economic argument and then made their usual analysis saying there is no federal pre-emption, meaning there is no comprehensive federal statutory irregulatory scheme covering the sale of cigarettes, and that there was no interference or no significance of interfering with tribal government, and it was a non-discriminatory tax.

However, it seems to me that it was primarily important to the Court that there was something about cigarette sales that was not inherent in tribal status or reservation status. When you think about the other Cases which had to do with the Forestry Industry on this reservation, and the Farm Machinery on Gila River, the Court thought there really was a fifference between those uses of the tribal resources and a situation of selling cigarettes, which is an artificial situation set up only on the basis of what kind of taxes are going to be charged.

The Court went on to say, just to sort of make it absolutely clear, that the State could charge its cigarette tax not only on non-Indians but on Indians who are not tribal members of that reservation. It also said, because this was a major issue Case, that the State had an interest in collecting taxes sufficient to allow it to seize the unstamped cigarettes. So the State had actually been seizing the cigarettes not on the reservation but before the trucks came to the reservation. The Supreme Court said the State has the power to do that and it was better they seized the cigarettes off the reservation than on. Thus they didn't have to decide whether the State had the power to seize the cigarettes on the reservation.

Moving to the excise tax on the privilege of using motor vehicles, the facts of the situation are that the State was charging the tax on any vehicles used by the tribe or tribal members if the vehicles were used off the reservation as well as on. Because of the McClanahan decision the State didn't assert its right to tax vehicles used only on the reservation. The Court struck down the tax, and said "no, you can't charge a use tax that is used both on and off the reservation." However, the Court said it might be all right--not that it would be, just that it might be,--if that the tax was somehow pro-rated, based on use.

So if a tribal member used a vehicle 20% of the time off reservation, the Court might say the State had the power to tax at 20% of its normal rate. This was a decision in which there were two concurring and dissenting opinions, and I'll get into that a little later because I think it is important to know that different Justices had different opinions about these things, if we want to guess what they might do in the future.

The next Case I'm going to talk about is White Mountain Apache Tribe v. Bracker. In that one, as you may remember from this morning, the Court was looking at the relationship between the regulatory authority of the State, and tribal self-government. This was a Case in which the State was applying a motor carrier license tax and a fuel use tax on two companies who worked exclusively on the reservation. The companies were carrying out logging and lumber activities under contract with a tribal enterprise. The Court held that the State's power to tax was pre-empted by Federal law, and went into an incredibly long discussion of the total and comprehensive federal regulatory scheme covering forestry on the reservation. It was a little hard for me to understand, but apparently during oral argument, (and Ian, if I'm wrong, you can probably tell me) the State conceded it wasn't asserting its power to tax the use of tribal roads--is that correct? O.K., I'm not sure what the issues in this case are; if the State conceded it didn't have a right to tax the use of tribal roads, and the tribe and the companies conceded that the State had the right to tax the use of State maintained roads, I think I would agree with Justice Powell, who said in dissent that there is no federal question. Are you sure? I told you I didn't want you here. I'm sure Ian's right and I'm wrong.

The Court went, if I may say whole-hog, on the idea that there was a comprehensive federal scheme, and that was the decisive factor. The Court also, however, in keeping with this idea in the prior Case, the Washington Case, that there is some sort of balancing to be done in this area. The Court talked about the State's interest and said that just because the State wants to raise revenue isn't enough to allow it to intrude in this way. The Court also went on to say that you don't need an express congressional statement in order for there to be a federal pre-emption. In other words, you don't have to have a congressional statute that says the State may not impose its motor carrier license tax on a contractor doing work on tribal roads in order to find pre-emption. Again, there were dissents and concurrences which I think will be important in the future.

The last Case, Central Machinery Co. v. Arizona State Tax Commission involved a transaction privilege tax, and as I think you heard earlier, there was a sale, and everything about that sale was done on the reservation. Actually, everything. The sale was made to a tribal enterprise, not to the tribe. However, the company making the sale was not licensed to do business on the reservation. The Court held again that the State's power to tax in this Case was pre-empted by federal law, the federal law in this case being the Indian Traders Statutes. They said there was a comprehensive scheme and the facts that perhaps the scheme had not been followed and that the company was not licensed to do business on the reservation, nor did it have a place on the reservation were all irrevelant. It's hard for me to understand that Case because I think the Court was wrong. Anyway, again, there were dissents and concurrences which all said no, if there is a comprehensive scheme that's one thing, but when we're talking about a situation like this it just shouldn't fall within the pre-emption doctrine.

I ask what do these Cases mean? That is why everybody reads Supreme

Court Cases, to sort of find out how to act in the future and try to figure out what is going to happen next.

Mr. Hibbs, who spoke this morning is a state administrator, and it seems to me he has to guess what these cases say. I, on the other hand, get to stand up here and make an academic analysis of the Cases and the answer to what do these Cases mean is--I don't know. I just cannot make many good guesses about what's going to happen in the future. The Courts certainly emphasize the fact that if there is a comprehensive federal scheme, then the State is pre-empted. I do not, however, think that is decisive, and in fact I think the Court sometimes first decides what to do, and then decides there is a comprehensive federal scheme. I think that is especially clear in the last Case we were talking about, where although they said the comprehensive federal scheme applied, the particular fact situation didn't seem to fall within that. There's some feeling in these Cases that the Court cared whether or not the business enterprise involved was based on some sort of important business or resource inherent in the tribe's status and reservation, (such as lumber), as opposed to some sort of artificial construct that occurred only because of an exemption for taxes, (such as cigarette sales). I don't know if I have made myself clear, but that is the only thing I can pick out from these Cases. That is, the Court didn't like the idea of the cigarette tax situation where the only advantage was due to an exemption from taxes. They didn't have any problem exempting taxes where the enterprise was somehow inherent in the tribe's business and in the tribe's reservation.

The last thing I want to say that if we wish to figure out what may happen in the future, we need to look at who on the Court did what, and keep in mind that 4 or 5 of the Supreme Court Justices are over 70 years old, and some of them are in ill health, and their replacements will be chosen by our President-Elect. Two of the Justices, Stewart and Rehnquist, always allowed the State Tax. Two of the Justices, Marshall and Brennan, who are among the oldest and sickest--(I mean they are physically ill, O.K.) were consistently against the State tax and for an exemption--if you want to say pro-Indian and anti-Indian, the first two were anti, and the second two were pro. In any case, keep in mind the ones you are likely to lose, Marshall and Brennan as opposed to Stewart and Rehnquist. Rehnquist, I believe, is the youngest member of the Court and in good health. Powell and Stevens are swing votes, as they are called, and they seemed to try somehow to make some sense of things. They have, to my mind, a rational basis for what they were doing. Now those last two are the people to look to if you have a case, or want to figure out what is going on. They're the Justices who seem to be trying to make some sense out of this area.

The rest of the Court (which is three people) went with the majority, no matter what the majority said, and I can't figure them out at all.

That's all I have to say. I've cut out a lot and I hope I've made some sense because I'm afraid maybe you all drifted off while I was talking about my favorite thing, which is Indian law in the Supreme Court. Thank you.

MODERATOR MRS. LEONA KAKAR INTRODUCED MR. SHELDON ELMAN, ASSISTANT DIRECTOR, STATE DEPARTMENT OF HEALTH SERVICES: "HEALTH PROGRAMS AND THE INDIAN TRIBES"

I appreciate the invitation to present to you today some information on the health programs of the Department of Health Services as they affect Indians *and Indian tribes. Because the time is limited, I will not be discussing the environmental health programs of the Department but will concentrate on those programs that have a more direct effect on health and the treatment of disease. Most of these programs are ones in which Indians participate on a voluntary basis, generally through a cooperative effort between the tribes, the Indian Health Service, and the State Department of Health Services. One such area of cooperative activity is in the filing of birth and death certificates.*

The Department is the recipient and custodian of all birth and death records in the State. Through cooperative arrangements, such records for Indian residents on tribal lands are also included. Upon receipt and filing, we are able to provide certified copies of these certificates. Certified copies are necessary for school attendance, tribal enrollment, sports programs, insurance, social security, and other such purposes or benefits. The Department uses the documents to obtain information to develop health statistics in such areas as infant death rates, chief causes of death, and the incidence of congenital malformations in newborns. With regard to death certificates, we are working with the Indian Health Service and the tribes to find a solution to a problem regarding who signs certificates for those persons who are dead-on-arrival at an Indian Health Service hospital. The lack of a physician's signature on some of these certificates has created a problem in the registering of the death and, thereby, preventing families from claiming benefits.

We are aware that one of the most significant health problems among the Indians is alcohol abuse. As a Department, we share your concerns about this problem and its effects on health, accidents, death rates, and economics. The place to begin control is with prevention. The Department has just received a federal grant of one million dollars to prevent and/or reduce health risks from smoking, alcohol, and chronic conditions. Fifteen percent of these funds are going to support Indian tribal programs. The Gila River Indian Community has received funds for the development of school oriented alcohol abuse educational programs and to conduct a workshop for alcohol-related truant students. Another grant to the Colorado River Indian tribe is aimed at deterring those under the age of twenty-four from smoking and abusing alcohol.

The Department annually receives significant sums of state funds to support behavioral health programs. Indian participation, both in terms of numbers and dollars expended, is greatest in alcohol programs. During the last fiscal year, approximately seven percent of all alcohol contract funds were used to support specialized Indian programs at both urban and reservation settings. Of the clients served by all alcohol contractors, approximately twenty-four percent, or almost five thousand, were Native Americans. Over eighty percent of the Indian clients receiving these services were unmarried males in their early thirties, and forty-nine percent of the services were delivered through Local Alcohol Reception Centers. Thus, half of the services to Indians were for detoxification and short term care. Even though the funding leve is high, it would appear that Indians with alcohol problems are not being offered a full range of preventive and treatment services, such a outpatient, partial care, and residential programs.

Similar problems occur with respect to other behavioral health programs that can be of service to Indians. There is a need for more drug abuse programs for Indian youth who already have a serious problem with using inhalants as drugs and for more programs directed toward primary prevention and early treatment services.

It is thought that one reason for the low utilization of such programs by Indians relates to the acceptability of such programs. All of the Department's behavioral Health contractors are therefore being encouraged to hire minority staff and modify programs, as necessary, to make their services more acceptable and available to minority populations that need them. In addition, the Department presently contracts directly with three Indian tribes and subcontracts through other agencies with seven other tribes or urban Indian programs.

The same low utilization of behavioral health servies has been observed in the area of mental health. Only three percent, or nine hundred thirty-one of all clients served by State-supported mental health programs were Indians. The majority of them were provided outpatient care in urban and reservation programs on a voluntary basis. Slightly over fifty percent of the Indian clients were female, and most were married and residing in Maricopa, Apache, or Navajo Counties. Although services are available from all mental health contractors to anyone who needs them, most Indian clients were served in specialized programs designed to be sensitive to their needs.

In all of these areas, the Department would like to encourage tribes and other Indian groups to participate more in the planning process in order to acquire additional resources, including applying to the Department either directly or through an umbrella organization for behavioral health funds, to make services available to Indians in Arizona. Training and technical assistance are available from the Department's Division of Behavioral Health Services. Jack Beveridge and Melody Tucker from that Division are here at the Town Hall and would be glad to talk with you to provide additional information or assistance in this area.

In addition to supporting community programs for those with mental illness, the Department operates the Arizona State Hospital in Phoenix. In-patient hospital services are available to all residents of the state. While the overall patient characteristics and treatment provided to Indians differ very little from the rest of the State Hospital population, only a small number of those admitted and treated at the State Hospital are Indians. This may be due to the fact that reservation Indians have greater access to alternative types of care through the Indian Health Service. A major problem, however, that might affect Indian utilization of the Hospital is the Hospital's difficulty in employing Indian staff to make programs more sensitive and responsive to cultural differences. Most significant is the lack of staff who speak Indian languages well enough to provide treatment to the patients with limited English ability. Two objectives of the State Hospital for the next few years are to employ staff who can make services more relevant to minorities, and to develop closer relationships with local communities, including Indian reservation and urban groups.

In addition to funding and coordinating programs to prevent and treat the behavioral health problems of Arizona citizens, the Department is vitally concerned with the control of communicable diseases. Departmental efforts to control communicable diseases are applied equally throughout the state, whenever a need arises. On reservations, we work closely with the Indian Health Service and tribal health officials to investigate any outbreaks or other disease problems. We offer technical assistance, laboratory testing, and specific funding for some disease control efforts.

A prime example of cooperation among all parties is in the State's *venereal disease control program. Venereal disease control services are provided in county health departments to Indians who choose to go there instead of Indian Health Service clinics. Additionally, the Navajo Tribe has a tribal venereal disease control program developed and conducted in collaboration with the State Department of Health Services and the U. S. Public Health Service. Arizona assigns one communicable disease investigator to Winslow and one to Fort Defiance to supplement on-reservation and off-reservation contact case-finding. Both the communicable disease investigators are Navajo Indians. Other reservations are provided case-finding and contact follow-up by state, county, or federal field staff as needed and as priority of time and case load permits. In all counties, one hundred percent of infectious syphilis cases are followed with respect to contact tracing. In addition, the Department's Health Education staff has worked closely with tribal health staff on several reservations to develop educational materials for the youth.*

Another disease control program managed by the Department of Health Services is for persons with tuberculosis. While most Indians with tuberculosis are hospitalized in Indian Health Service facilities, a few off-reservation Indians will be placed in regular hospitals in Phoenix or Tucson, at the State's expense, to assist in the diagnosis of tuberculosis. A significant problem with Indians having tuberclosis involves the follow-up care after hospitalization, particularly for male alcoholics. While out-patient care is provided in county health department clinics that receive funds from the State for this purpose, and off-reservation Indians are provided the same services as any other county resident, many of the male alcoholics will not return for care or will not take their medication. Also, because Indians often move back and forth between reservations and the cities and towns, it is difficult to coordinate treatment so that it continues for the necessary six to twelve months.

Finally, I would like to briefly mention the State's health programs for women and children. The newest funded program in this category is designed to provide maternity care to high risk, county-eligible pregnant women in the twelve rural counties of the state. The services, which include prenatal care and delivery, are still in the planning stages but will be available to non-reservation Indians who meet the county criteria.

One other major health program is the Special Supplemental Food Program for Women, Infants and Children (WIC) - A federally funded program administered by the U. S. Department of Agriculture. The Arizona WIC Program is statewide and provides services in each of the fourteen counties and on ten Indian reservations. Indian involvement in this program has been significant since the Program's introduction in Arizona in 1973.

The Program objective is to provide specific nutritious food, nutrition education, and referral services to pregnant, breastfeeding and postpartum women, and infants and children up to five years of age. The Program serves as an adjunct to health care during critical periods of growth and development to improve the health status of women, infants and children. Currently, Indians who are eligible for health care at free or reduced cost at county health departments or through the Indian Health Service are eligible for the WIC Program.

During fiscal year 1979-80, WIC in Arizona was budgeted at sixteen million dollars and provided program benefits to approximately thirty-eight *thousand participants on a monthly basis. Fifty percent of the WIC participants were Indians. On a monthly basis, approximately eighteen thousand Indians were served by tribal WIC programs and an additional one thousand Indians were served through county WIC programs. Of the total dollars available, approximately eight million five hundred thousand dollars were spent for services to Indians enrolled in the Program. The greatest impact of WIC services appears to be in improving the status of the unborn child. Indian women who were on the WIC Program appear to have fewer low-birth weight babies (four point six percent) than the general Indian women population who gave birth in 1978 (six point four percent). As with most programs, however, there are ways that services could be improved. On Indian reservations, there are two significant problems. First, the remote trading posts need to be encouraged to stock a larger variety of the authorized WIC foods at competitive prices, and second, inadequate water supplies on the reservations require the use of expensive ready-to-feed formulas, thereby using funds which could serve more families with less expensive products.*

In addition, there are two other children's programs with which many of you may be familiar: The newborn Intensive Care Program and the Crippled Children's Program. The State Newborn Intensive Care Program serves Indian infants born both on and off reservations in Arizona.

Indian newborns who are premature or otherwise need special care are transported to one of the major hospital centers in Phoenix or Tucson, usually from an Indian Health Service hospital. Air or ground ambulance services are provided with a transport team. The intensive care services are provided in the hospital for as long as needed by the baby. Physician, hospital, and transport costs for Indians who have been authorized for care by the Indian Health Service are reimbursed by the State Program at the same level as the State's share of the total cost of the Program. Costs for Indians not eligible for Indian Health Service care are reimbursed on a residual basis as are all other infants, depending upon availability of insurance and family funds. During fiscal year 1979-80, there were one hundred twenty-one Indian babies cared for by the Newborn Intensive Care Program, representing seven percent of the total infants cared for by the Program.

The Crippled Children's Services program provides a full range of diagnostic and treatment services to children with crippling or potentially crippling conditions. In order to qualify for services in the program, a child must be an Arizona resident; under the age of twenty-one years; meet certain financial criteria; and have or be suspected of having an eligible medical condition, such as congenital heart disease, cleft lip and palate, bone and joint deformities, cerebral palsy, epilepsy, and cronic ear disease.

Services are provided at the Arizona Children's Hospital in Tempe, Tucson Crippled Children's Clinic, and private hospitals in Phoenix and Tucson. In addition, members of the Crippled Children's Services medical staff conduct periodic clinics in various communities throughout the state and on Indian reservations. This year, crippled children's clinics will be conducted at Whiteriver, San Carlos, Keams Canyon, Chinle, Fort Defiance, Tuba City, Kayenta, Winslow, Ganado, and Sells. These field clinics provide services in orthopedics, plastic surgery, and heart disease.

Indian children may be referred to any of the clinics by a doctor, school physician, friend, or the family. A physician on the Crippled Children's

Services medical staff will examine the child to determine if he has an eligible medical condition and, if so, will recommend necessary treatment services. If the family qualifies financially, the child will receive care in Phoenix or Tucson.

During fiscal year 1979-80, four hundred fifty-two Indian children received services for the first time from Crippled Children's Services. During that year, there were a total of two thousand two hundred forty-one clinic visits by Indian children, including one thousand one hundred fifty-eight visits in the field clinics on the Indian reservations. This resulted in four hundred thirteen hospital admissions, including three hundred twelve at Arizona Children's Hospital.

Two major problems have developed in providing services to Indian children who reside on the reservation. One involves the recent restrictions on travel provided by the Indian Health Service which have delayed some routine clinic visits. The other problem relates to a decline in utilization of the field clinics. During fiscal year 1979-80 there was a twenty percent decrease in the number of patient visits at reservation field clinics. Crippled Children's Services is working with the Indian Health Service to improve outreach efforts by field health nurses to ensure that Indian children needing care are seen in those clinics.

Whatever you can do to carry back the message that these clinics are available will greatly benefit the children who need the services.

I hope I have given you some idea about the State-sponsored health programs available to Indians. We invite your continued interest and participation, and look forward to working with you. We are particularly supportive of tribal efforts to develop health departments or health agencies. In our Department, we have an Office of Local Health Services which can provide technical assistance to tribes interested in expanding their role in health promotion, environmental health, or disease control. Tribal representatives are always invited to our quarterly meetings with local health officials.

Thank you for inviting the Department of Health Services to participate in your Town Hall. You will find several pamphlets about our programs in your packet.

MRS. LEONA KAKAR, MODERATOR, INTRODUCED MR. RICHARD WOLFE, DIRECTOR, ARIZONA MOBILE & MANUFACTURED HOUSING STANDARDS: "THE NEED FOR INSPECTIONS OF INSTALLATIONS OF MOBILE HOUSING"

Ladies and Gentlemen:

I am happy to have the opportunity to speak to you today about a matter that concerns many members of your respective communities. That is, the need for inspections of the installations of mobile homes. Great strides have been made in the quality of mobile homes over the past few years. Every mobile home built after June, 1976, must conform to a strict set of standards created by the U. S. Department of Housing and Urban Development, and enforced through the National Mobile Home Act. These standards ensure that mobile homes built in this country are safe and well-constructed. Mobile homes now offer a high quality, low-cost alternative to conventional housing.

Our agency, the Division of Mobile and Manufactured Housing Standards, is responsible for seeing that the federal construction standards are complied with. We also regulate the manner in which mobile homes are installed and set up, by inspecting the installation of mobile homes in the state. This inspection program is similar to those used to inspect conventional, site-built housing. First, a building permit must be obtained, then a local building official will look at the home several times during construction, to see if all building codes are being followed.

Our state program for mobile homes also requires a permit. After the home is set up, an inspector will come out to examine it to see that all codes are complied with. The installation of a mobile home involves several steps. The home is bolted together if it is in halves, then it must be made level, then the gas, electric, water and sewer connections are made. An improper installation can lead to serious problems which could threaten the safety of the homeowner. For instance, a bad electric connection could start a fire. So, these types of connections must be looked at carefully.

If the home is not properly levelled, all sorts of problems, such as warped floors and walls, doors that don't close, and leaky windows, can result. All of these problems mean a big headache for the homeowner. I brought along some slides to show you which will let you see the difference between a proper installation and an improper one.

SLIDES

As you can see, the installation of a mobile home must be done properly, or a whole variety of problems can occur. Our state legislature dealt with this problem by passing a law requiring our agency to set up a state-wide program of inspections. The goal of this program is to train the local building officials to perform these inspections themselves. We will train your people at no charge, and we will consult with them when questions arise. Now, many local governments were doing inspections before this program was created. They have come into agreement with our agency to inspect the mobile homes to the state standards. Of the 85 local jurisdictions in Arizona, 52 of them have come into agreement with the Division. In the remaining areas, we are sending inspectors where they are needed. In addition, we have set up five field offices around the state to help assure speedy inspections.

This brief history of the program and the needs it is trying to address brings me to the reason for my appearance here today. We have had complaints and information given to us that some dealers and manufacturers are placing mobile homes on Indian reservations improperly, and are causing unsafe living conditions for your people. This is being done, I think, because the manufacturers believe that we do not have any authority over these installations on tribal lands. My sole reason for being here today is to express to you my concern, my worry, that someone is going to be harmed by these improper set ups. I would like to meet individually or collectively with representatives from each of the tribes to discuss how we can resolve this problem. I would prefer that the tribes enter into an agreement with us and conduct your own inspections. Any money collected by the tribes, from the sale of the permits, stays with the tribe...We do not take any of it. In addition, we provide training for your inspectors at no cost, and at your convenience. We also stand ready to offer technical assistance at any time to help you implement the program. The other alternative, as I explained earlier, is that if the *tribe does not wish to utilize their own personnel for these inspections, we would be glad to conduct them ourselves. Of course, the State would retain the permit fee to cover the costs of sending the inspectors to the inspection site and administrative costs for the rest of the program.*

In summary, our only desire is to have a program of uniform installations of mobile homes in our State that will assure safe, low-cost housing for our people. I encourage you to give serious consideration to this matter and invite you to contact me direct at any time so that we may get together and discuss the program in more detail.

This concludes the formal presentation, but I would be glad to answer any questions from the audience.

Thank you again for the opportunity to appear before you and I wish you a good day.

MRS. LEONA M. KAKAR, MODERATOR, INTRODUCED MR. PHIL AUSTIN, DIRECTOR, DIVISION OF CIVIL RIGHTS, ATTORNEY GENERAL'S OFFICE: "CIVIL RIGHTS AND THE INDIAN TRIBES"

At functions where I see both lawyers and non-lawyers in attendance, I have been amused about some of the conversations that go on It reminds me of a situation you might have heard about, where a group on a voyage were ship-wrecked, and the group swam to a deserted isle. The group nominated 3 people to lead them to rescue. They nominated a minister, a doctor, and a lawyer. And the 3 got together, and reconnoitered a bit, and saw they were on this reef, and saw there was an island far away where help might be obtained. However, there were sharks between the reef and the island. So they had to decide which of the 3 would go. The doctor said, "Well, of course I can't go...if I go in there the sharks will get me, and we will lose important medical help." And the minister said, "No, I cannot go as I provide great spiritual leadership for the community in the case something happens." So they turned to the lawyer and looked at him, and he goes, "Hmm." So he dives in. Sure enough, the sharks come. But strangely enough what happens is the sharks circle around him, and acting as a kind of vanguard he grabbed onto two of their fins, and they took him to the island where he was able to procure a boat, and come back to the isle. The minister exclaimed, "A miracle! A miracle!" The lawyer, dusting himself off said, "no, it is just a professional courtesy among peers."

You can see I have been in the law enough to develop a healthy disrespect for it, and also to know as it was stated here previously, that litigation is not always the answer, and that a great deal can be obtained through other means. I hope this is the hallmark of this conference; and I incorporate now everything that I have heard so far that encourages communication and cooperation between the state agencies and the Indian tribes. I feel this particularly, because in my capability as the chief counselor, and Executive Director for the Civil Rights Division of the Attorney General's Office, I realize that Indian groups are without a doubt one of the component groups that reaped benefits of civil rights legislation in the past, and this concern should be shared by those involved with civil rights in the future. So I think it is very well that we are here, and I feel very honored to be invited here, and I thank the Commission for inviting me. I want to state here, that *unlike Dr. Brown who spoke here this morning, I definitely am here to sell something.*

First, let me explain a little of what Civil Rights is, what we do, then allow me to pinpoint a problem, and explain the problem to this group in hopes that you will give us some support in trying to air our communications with the federal government over an issue that vitally concerns Indian tribes and Indians throughout the nation. But first, let me talk generally and briefly about the Division.

The Civil Rights Division is part of the Attorney General's Office of the state. The State Civil Rights Act of 1965 is modeled and traces the Federal Title VII of the U. S. Civil Rights Act of 1964--the much heralded Civil Rights Act. Our primary function is to enforce the law which prohibits discrimination based on a person's race, national origin, religion, creed, sex, and as of July of this year, age, between the ages of 40 and 70 in the areas of employment, voting rights, and public accommodations. However, the reality is that 99% of our cases deal with employment problems. So if a person feels that they have been discriminated against, that is, if they have been treated differently, i.e., if they have been fired, if they have not been hired, they've been demoted, not granted a pay increase, been harrassed, been subject to hazardous or other unsavory conditions on the job, they can come to our office and file a complaint. We have trained lawyers and investigators who will investigate the complaint, try to resolve the complaint through reconciling it with the parties. If we find that, in fact, there has been discrimination, we have the power to litigate and have recently been litigating cases. So it is important for you to know that there is an Agency in the state that provides this service throughout the state, regardless of jurisdictional questions. I would like to stress that we are an Agency that should serve the whole state--and I make a point here--Indian and non-Indian alike.

It is within these guidelines of the law, that we get our basis. There are different interpretations of what the law says, and I personally believe that the Civil Rights Act reflects an effort to resolve these kind of problems at the lowest level possible. I personally possess a Jeffersonian view of democracy, i.e., that government should be handled at the lowest level. With that regard I have great deference for the concept of Indian Sovereignity. However, as an attorney, as a chief Civil Rights enforcement officer of the State, I have, I think, the responsibility to try to see that the law is distributed and enforced for all of the people in the State, which brings us to a problem.

As I said before the Civil Rights Division was powered by the Arizona Civil Rights Act. The Federal Title VII U.S. Act created a federal agency called the EEOC, Equal Employment Opportunity Commission. That Agency was established to enforce the Federal Civil Rights Act throughout the nation, and is probably the most widely-known Agency which does this. However, part of Title VII of the Civil Rights Act is a Section 706 which demands that before EEOC processes a case, they must allow the State, the CRD, to have 60 days over which it will establish its jurisdiction and looks into the case. That is what we call jurisdictional requirement. They must do that. The federal law mandates that they must do that . That gives us what is called 706 status. We are a 706 Agency for those purposes.

I hate to bore you with these technical terms, but I think, if you bear *with me, we'll get the point. As a 706 Agency again we are to defer these cases 60 days after the charges have been filed. In regard to Indian tribes, when we are involved in a case the following occurs.*

I want to stop and explain the possibilities that I see of a case emanating from an Indian tribe. (The shorthand here, tri stands for tribal Indians.) The U. S. Civil Rights Act and the Arizona Civil Rights Act both prohibit any charge of discrimination being lodged against tribal employers, that is, the Civil Rights Act don't apply to tribal employers, so that a tribal employer cannot be charged with discrimination in the Civil Rights Act. Therefore, an Indian or non-Indian employee cannot bring a charge.

The second set of situations is that of an Indian, and a non-tribal employer. An Indian employer, not the tribe, can have a charge filed against him by an Indian or non-Indian, again not necessarily on racial or national origin grounds, but maybe it could be sex, age, religion, whatever.

And the third situation that can happen on an Indian reservation is that a non-Indian employer can have a charge brought against him or her by an Indian or non-Indian. Those are the possible situations that could develop on the reservation.

Now, with that in mind, the EEOC has just issued a directive in the Spring of this year that stated the following: "The Office of Field Services in conjunction with Legal Counsel of the Division of the EEOC has determined that the State 706 Agencies in Arizona, New Mexico and Utah lack jurisdiction over the Navajo reservation within their borders. Consequently, the Phoenix District Office and the Albuquerque Area Office of EEOC are hereby instructed to cease deferring charges arising on the Navajo reservation within these states 706 Agencies. Such charges should not be deferred and processed immediately by EEOC.

So EEOC, which is just a federal agency and not Congress, has issued a regulation saying that their interpretation of the law says that the State has no jurisdiction over claims from reservations. However, I told you before that Title VII which established EEOC also states this organization must defer the charge to the State agency for 60 days. Congress has said that. EEOC has said they will not do that. Now, the reason they said they won't do that is because of the discussion we were having here before today. Under what situations does the State have jurisdiction over the reservations? A question, again subject to interpretation, and I think our analysis would come on the side that in regard to cases that have come down, there seems to be two lines of thought, or two theories. I may be over-simplifying it for the lawyers here, but just go swim with the sharks for a little bit, if you want. The two lines as I see it are infringement cases and the pre-emption cases. The infringement cases say that the State cannot infringe on the legal authority of the tribes. Those are Francisco, MaCallahan and those other cases. The other cases which would say that if they are federal pre-emption cases i.e., is when the federal government has laid out a national scheme. We have the Central Machinery Case which involved traders, the Federal Trade Act which involved the selling of merchandise. We had the Whiteriver Case which involved natural forestry regulations. If there is a federal scheme, that scheme would supersede the state jurisdiction.

Again, I hope I'm not losing anybody here because this point is very important.

We would argue, that in this case, the tribal Indian employer case, that it is clear that we, as well as the EEOC, have no jurisdiction. We cannot bring a claim of discrimination against a tribal Indian employer. The question comes about, who has jurisdiction over non-tribal and non-Indian employers. The cases again, in recent discussion you have heard before--said that the Indian employer v. the non-Indian employee and Indian employee case is unsettled. However, based on the cases that have been discussed today, it seems that the non-Indian employer involved in a situation with the non-Indian employee and the Indian employees is subject to the State jurisdiction because the act may have a regulatory effect on the non-Indian employer. The importance of this, and I say all kinds of important things I know, is that we contend in this case we would have jurisdiction. EEOC contends otherwise, saying the whole spectrum of cases that the State has no jurisdiction whatsoever.

This year the Federal 5th Circuit issued a decision called the White v. Dallas School District Decision which said that if the EEOC did not properly defer the case to the State agency, or the local agency involved, persons bringing suit or the EEOC themselves would be kicked out of Court. So the consequence of EEOC action is to deny Indian plaintiffs their day in court. I would just incorporate again the messages that were received this morning about cooperation, only in this Case we have a new party. Reference was made today that the tribes are more prone to seek ties with the federal government. In this case the cooperative venture cannot be had, and this is where my sales pitch comes in. The Indian tribes must recognize and report this point. The EEOC is gambling. Everybody admitted today that we don't know what the next Court will decide on some of these issues. But here's what EEOC's position is: They're saying no, that they did not defer the charge to CRD. Therefore, if a case comes before the Federal Court in which EEOC has not deferred the charge to the State, the EEOC is gambling and saying, we're going to gamble that we're right, and the State is wrong. The stakes are going to be individual Indian plaintiffs, because if the EEOC is wrong, individual Indian plaintiffs will not be allowed to take their charges to Court. Neither will the EEOC because they have not properly deferred the charge according to law. You may argue that these cases go this way and that way, but I submit to you that's a nice legal term that wouldn't it be better to defer for safety's sake. Give us the 60 days, and if we don't handle it in 60 days, then return it to Federal jurisdiction again, thus insuring that jurisdictional requirements are met, so that the Indian and the non-Indian can have the right to be fully protected in a Federal Court. We're in discussions and seeking cooperation with EEOC, too, so that they would withdraw this overbroad directive, because I think there is no question in this area neither one would have jurisdiction. This is a gray area. But surely here, we would argue that the State has jurisdiction, and the better approach would be to allow the State to become involved in this activity.

MRS. LEONA KAKAR, MODERATOR, INTRODUCED MR. TOM CLARK, DEPUTY DIRECTOR, STATE DEPARTMENT OF WATER RESOURCES: "CAP ALLOCATIONS"

On October 12, 1976, Acting Secretary of the Interior Kent Frizzell announced his decision on the amount of Central Arizona Project water which would be allocated to five Central Arizona Indian Tribes. This allocation is referred to as the "Kleppe allocation." It provided that the Indian tribes would receive 257,000 acre-feet of water in the first 20 years of

Project deliveries and 10 percent of the total water delivered or 20 percent of agricultural water deliveries, whichever was greater, in the remaining years.

This past summer Secretary Cecil Andrus proposed an important adjustment to the method of allocating Project water to Indian tribes. The following factors were among those listed by the Secretary as reasons for the adjustments.

(1) The 1976 allocations did not provide Project water to all the Indian tribes which could reasonably benefit from the Project. For example, the San Carlos Apache Tribe, which was mentioned specifically in the legislative history of the Project as an intended recipient of Project water, did not receive any allocation.

(2) Subsequent to the 1976 decision, Congress committed the United States Government to provide the Ak-Chin lands with a permanent water supply. Additionally, U.S. Congressman Morris Udall has introduced a bill, H.R. 7640, which would similarly provide permanent water for lands of the Papago Tribe.

(3) President Carter, in his Water Policy Message to Congress of June 6, 1978, recognized that Indian reservations are intended to be maintained as permanent tribal homelands. In an arid region such as central Arizona, a relatively dependable long-term water supply is critical if these homelands are to exist.

(4) Also in his June 6, 1978, message, the President announced his Administration's intent to settle Indian water claims through negotiation, wherever possible.

*Besides the factors listed above, the Secretary stated that an important reason for his proposed adjustment of the 1976 allocations concerned the reduction of water to Indian tribes after the year 2005. Under the Kleppe proposal, Indian irrigation water would have been reduced substantially. From 257,000 acre-feet per year in the first 20 years of the project, the amount received by Indians would be reduced*either 10 percent of the project supply or 20 percent of the agricultural supply, whichever was to the tribes' advantage. In the Secretary's opinion this abrupt reduction in Indian supply is unfair to the Indians. He stated that under the post-2005 formula used in the 1976 allocations, the economic growth permitted on the reservations in the early years of CAP operation would be only temporary, and both the Government and the tribes would be faced with the costs of a return to depressed economic conditions. His allocation proposal is an attempt to assure the tribes of a more dependable supply of water throughout the life of the project.*

The 1976 Kleppe allocation awarded CAP water to the following reservations: Ak-Chin, Gila River, Salt River, Papago (Chuichu) and Fort McDowell. The rationale used in making those allocations is explained in detail in the 1976 Federal Register notice. Generally, the procedure is this:

(1) The total acreage of presently developed lands on each reservation is determined.
(2) The total water requirement for each reservation is computed on the basis of a water duty of 4.59 acre-feet per acre.

** in the later years of the project*

(3) The number of acre-feet of non-project surface and groundwater available to each reservation is estimated.

(4) The number of acre-feet of project water required for each reservation is then obtained by subtracting the available surface and groundwater from the total water requirement.

(5) The number of acre-feet to be delivered to each tribe at the turnout points on the project canals is the amount as determined in #4 multiplied by 1.176 to allow for a 15 percent loss in the distribution systems from the amount delivered canalside.

On the basis of this approach, the following allocations were made: Ak-Chin, 58,300 acre-feet; Gila River, 173,100 acre-feet; Salt River, 13,300 acre-feet; and Papago (Chuichu) 8,000 acre-feet.

In the case of the Ft. McDowell Tribe, it was found that the tribe had an adequate supply of water to satisfy all of its present farm requirements. However, 4,300 acre-feet were allocated to the tribe to irrigate new in-lieu lands which the tribe may receive pursuant to the Colorado River Basin Project Act. This allocation was supported by the four other tribes.

Secretary Andrus affirmed the 1976 allocations to these reservations with the stipulation that they would not be reduced in the year 2005 as previously proposed.

In 1976, no allocation was made to the Camp Verde Reservation. On the basis of the formula described above, Secretary Andrus proposed to allocate 1,200 acre-feet of water to Camp Verde to be used on its 200 presently developed acres.

The San Carlos Tribe also did not receive an allocation. San Carlos presently has some 1,800 acres developed for irrigation. Using the above formula, the tribe would receive a gross allocation of 8,700 acre-feet, reduced by 6,000 acre-feet of available surface water, for a net allocation of 2,700 acre-feet. Additionally, Secretary Andrus decided that the San Carlos Reservation needed a supplemental allocation of 10,000 acre-feet to sustain it as a permanent tribal homeland, bringing the total CAP allocation to San Carlos to 12,700 acre-feet.

Four reservations of the Papago Tribe--San Xavier, Schuk Toak, Chuichu, and Gila Bend--appealed to the Department of the Interior for an allocation of water. These reservations are included in H.R. 7640 which would direct the Secretary of the Interior to provide 180,000 acre-feet of "firm supplies" of water to them. The Secretary's tentative allocation to Chuichi is identified above. With respect to San Xavier and Schuk Toak, the Secretary tentatively provided them with the minimum water supply needed to create what he described as an economic farming unit. For the San Xavier Tribe this is 27,000 acre-feet and for Schuk Toak, it is 10,800 acre-feet. The Gila Bend Reservation is upstream of the Painted Rock Dam and virtually all irrigable lands are subject to extensive flooding. The Secretary decided not to make a proposed allocation of water to Gila Bend; however, he invited the tribe to make its arguments as to the practicability of a CAP allocation during the public comment period.

The White Mountain Apache Tribe asked that the Secretary not allocate any CAP water to it. He has complied with its request.

Finally, there are three small reservations within the project area to which the Secretary proposes to make allocations. Two of these reservations, the Pascua Yaqui and the Tonto Apache, were established subsequent to the passage of the CAP authorizing legislation. The third, the Yavapai, was established prior to 1968, but was not allocated any water in 1976. An allocation to these three tribes would provide them with the minimum supply of water needed to maintain their reservations as tribal homelands. Proposed allocations are 500 acre-feet to the Pascua Yaqui; 110 acre-feet to the Tonto Apache; and 500 acre-feet to the Yavapai.

While the non-Indian agricultural supply of water will vary from year to year, even under pessimistic projections of water supply, Indian agricultural users and M&I users will receive their full allocations of water in most years. However, it is likely that there will be some years, probably after the turn of the century, in which there will not be enough water to satisfy Indian and M&I users completely.

Under the Secretary's proposal in these shortage years, Indian users and M&I users will share a first priority on water.

Under the concept, the scheme for reducing water deliveries in times of shortage will work this way: First, miscellaneous uses would be reduced pro rata until exhausted; next, non-Indian agricultural uses would be reduced in the same way until exhausted; thereafter, water for Indian and M&I uses would be reduced on a proportional basis, and within each class on a pro rata basis. The proportional basis between these two classes would be fixed as a ratio of the amount of water used by each class in the most recent year in which a full supply was available for both classes.

The most critical element to non-Indian water users of Secretary Andrus' proposed changes appears to be the concept of shared priority in years of shortage. To help overcome the problems associated with shortages to M&I users, the State has proposed that 107,000 acre-feet of effluent be delivered to Indian agricultural users as a substitute for part of the firm supply allocated to the Indian tribes. Additionally, the State proposed that the allocation to the Ak-Chin Reservation be firmed by groundwater rather than from CAP. We are now awaiting the next action by the Secretary.

ALLOCATIONS TO NON-INDIAN APPLICANTS

In June 1976 the Water Commission made recommendations for M&I allocations and in 1979 it recommended distribution for agricultural water. Revision of these became necessary as a result of Secretary Andrus' allocation adjustments to the Central Arizona Indian tribes.

The preliminary reallocation was recently released by the staff of the Department of Water Resources. It is based on the assumption that the Secretary of the Interior's final decision on the Indian allocation will include the provision for effluent to be delivered to Indian users in lieu of a portion of the Secretary's proposed CAP allocation. It also assumes that groundwater will be supplied to the Ak-Chin Reservation rather than CAP water in times of shortage.

Briefly described following is the proposed allocation among applicants.

Municipal and Industrial (M&I)

The M&I allocation is based on apportionment of 725,000 acre-feet of water supply in year 2034, the last year of Project repayment. This proposal is a major deviation from the one made in 1977 when approximately 500,000 acre-feet was divided among applicants. The earlier allocation was based on the concept that contract amounts would be limited to the firm supply and therefore not subject to shortage during periods of drought. Conversely, allocation of 725,000 acre-feet carries with it the probability that M&I users will be subject to shortage in some years in the future. The extent of anticipated shortages is difficult to predict. The Department believes that 725,000 acre-feet represents a water supply in which the difference between 725,000 acre-feet and the firm supply will be available approximately four out of five years on the average if at least 107,000 acre-feet of effluent are exhanged with the Indians and the 58,000 acre-feet to Ak-Chin Reservation is firmed with groundwater from the project authorized by Public Law 84-984. Shortages may occur over lengthy periods of time, perhaps as long as 10 to 15 years.

The principal basis for distribution of supplies was to prorate amounts from an estimated base need. The base need for municipalities in 2034 was assumed to be the amount of water necessary to supply the official population projection for the applicant's service area as determined by the Department of Economic Security, at a use rate of 180 gallons per capita per day (GPCD). This applied to applicants below an elevation of 3,000 feet. Any applicant with a service area above 3,000 feet had a base need of 165 gpcd.

The base need for the power companies was estimated by the Department using projections of anticipated electrical energy use in Arizona and average water use per unit of energy produced. All existing water supplies available to the power companies were assumed utilized. Based on this concept the Department estimates that APS and SRP had a need for 55,400 acre-feet of water to provide cooling for electrical generating power plants in year 2034. Tucson Electric Power Company had a base need for approximately 5,700 acre-feet in 2034.

For the mining industry the need was based on current use rates at each of the mines and in some cases increased to satisfy anticipated new developments. Allocations to the mines located south of Tucson were based on the assumption that the CAP facilities would deliver a mix that would consist of 50 percent effluent from the City of Tucson. Hence, the allocation of Central Arizona Project water was 50 percent of the pro rata need.

The base need for the State Land Department was established at 50,000 acre-feet in 2034. This supply is allocated to provide a water supply for new developments on State lands lying outside the service areas of the cities and private water companies and not included in the allocations for those cities.

It was necessary to reduce allocation rates to 89 percent of applicants' needs in 2034 to constrain total M&I use to the 725,000 acre-feet available. In situations where the applicant requested less water than the computed base need, the lesser amount was allocated.

Agricultural

The proposed agricultural allocation was essentially the same as *recommended to the Secretary of the Interior on August 31, 1979.*

The recommendations are stated as percentages of available supply. Most changes from the 1979 recommendations are a result of new population projections which affect the amount of lands eligible to receive CAP water. In some areas, current projections show more urban growth on agricultural land than anticipated in 1979. These projections result in a lesser allocation to affected contractors.

GROUNDWATER MANAGEMENT ACT

The Groundwater Management Study Commission was established in 1977 by Senate Bill 1391. It was charged with the responsibility to develop a comprehensive groundwater management code for Arizona. The Commission was statutorily comprised of 25 members with seven members of the Senate, seven members of the House of Representatives and 11 members appointed by the Governor to represent the major water-using interests in the State. They included two persons to represent cities and towns; two persons to represent mining; two persons to represent agriculture; one person to represent the Indian communities; one person to represent the electric utilities; and three other persons.

On June 11, 1980, the 34th Legislature of the State of Arizona adopted, as introduced, the groundwater management code recommended by the Commission. On June 12, Governor Bruce E. Babbitt signed the code into law.

A major provision of the Groundwater Management Act was the establishment of the Department of Water Resources in which all State level surface water and groundwater management functions are consolidated. The DWR is headed by a director who is appointed by the Governor and is responsible for the development and administration of State water management policies. The Arizona Water Commission is continued within the DWR in an advisory capacity with the responsibility to review water laws and recommend any necessary changes. Following is a brief overview of the major provisions of the Groundwater Code.

Article 1. Article 1 states that it is in the best interest of the State to establish a framework wherein the uses of groundwater are those which are the most beneficial and economically effective. Article 1 also sets forth the procedure for appeals and mandates that the director establish groundwater basins throughout the State.

Article 2. Article 2 provides for the creation of active management areas. These are geographical areas in which intensive groundwater management will be required. Initially four AMA's were established - Phoenix, Tucson, Pinal and Prescott. Subsequent AMA's may be established by the director if it is determined that groundwater preservation, land subsidence or quality considerations necessitate the need for management. Each AMA will have an area director responsible for implementing the management plan and a groundwater users advisory council appointed by the Governor to represent the major water users within the AMA.

Article 3. The Groundwater Management Act repealed the Groundwater Code of 1948 and terminated the use of critical groundwater areas as management units. Article 3 also establishes irrigation non-expansion areas in which there is an insufficient groundwater supply for existing agriculture, but does not require active management.

Articles 4, 5, 6 and 7. These articles set forth the provisions governing rights to withdraw and use groundwater. The code provides that existing legal users of groundwater will be allowed to continue their uses based upon a quantified amount of historical use. The director is also given the power to issue groundwater withdrawal permits for new uses within an AMA which cannot be satisfied through the purchase of grandfathered rights or through water service from a city, town or private water company. Cities, towns, private water companies and irrigation districts can withdraw as much groundwater as is needed within their service areas subject to conservation requirements.

Article 8. Article 8 addresses the rules for transporting groundwater. In an AMA, groundwater withdrawn pursuant to a grandfathered right or a groundwater withdrawal permit may be transported within a sub-basin of an AMA without payment of damages. Groundwater withdrawn by a city, town, private water company or irrigation district from within its service area may be transported within its service area within a sub-basin of an AMA without payment of damages.

Groundwater may also be transported between sub-basins of an AMA or away from an AMA. If the groundwater is withdrawn pursuant to a grandfathered right that is based on retired irrigated land, transportation of three acre-feet of groundwater per acre per year withdrawn from retired irrigated land is not subject to payment of damages. In addition, groundwater withdrawn subject to a non-irrigation grandfathered right, that is not based on retired irrigated land, a permit, or by a city, town, private water company or irrigation district from within its service area, is subject to payment of damages for any amount of groundwater transported.

Generally, in areas not subject to active management, transportation of groundwater is allowed within a groundwater basin without payment of damages.

Article 9. Article 9 sets forth the management goals for initial AMA's, a program for reducing groundwater withdrawals in initial AMA's and the requirement of an assured water supply for new developments in AMA's. The management goal for the Tucson, Phoenix and Prescott AMA's is "safe yield" by 2025. "Safe yield" is a goal which attempts to achieve and maintain a long-term balance between the annual amount of groundwater withdrawn in the AMA and the annual amount of natural and artificial groundwater recharge in the AMA. The management goal for the Pinal AMA is to preserve existing agricultural economies as long as feasible, consistent with the need to preserve water supplies for non-irrigation uses.

Article 9 provides for gradual reductions in groundwater withdrawals by establishing a 45-year program. The program is divided into five management periods and the Director will develop a management plan for each AMA prior to each management period. In each successive management period, conservation requirements will become progressively more stringent as required to reach the management goal for the AMA. If conservation alone is not sufficient to reach the management goal, the director may, after 2006, purchase and retire grandfathered rights. Management plans will also include programs for augmentation of the water supply and assessment of water quality problems in the AMA.

In an AMA, a person proposing to sell subdivided or unsubdivided land will be required to obtain a certificate of assured water supply from the director prior to any sale. In order to obtain a certificate, the person will be required to demonstrate:

1. A water supply of adequate quality will be available to satisfy the

proposed use for at least 100 years;

2. The projected water use is consistent with the management plan and achievement of the goal for the AMA: and,

3. The financial capability to construct a delivery system and any treatment works necessary to make the water available for the proposed use.

The director will designate service areas of cities, towns and private water companies where an assured water supply exists.

Article 10. The Groundwater Management Act provides for statewide registration of wells and the establishment of well construction standards. All new well construction must be performed by a licensed well driller.

Article 11. Article 11 sets forth the provisions for the levying of groundwater withdrawal fees within an AMA. The fee may not exceed $5.00 per acre-foot and will be used to finance administration and enforcement of the groundwater management code, augmentation of the water supply of the AMA and the purchase and retirement of grandfathered rights, when this is required by the management plan.

Article 12. The final article of the code contains enforcement provisions and sets forth the director's authority to enforce code provisions.

Even from this brief overview it is apparent that Arizona's Groundwater Management Act is the toughest water management legislation existing anywhere in the United States today.

MODERATOR CLINTON PATTEA INTRODUCED THE GUEST BANQUET SPEAKER, MR. JOHN MULKEY, LEGISLATIVE ASSISTANT TO U. S. SENATOR DENNIS DECONCINI: "ELEMENTS OF THE STATE-TRIBAL COMPACT ACT OF 1979"

Thank you, President Pattea. It is a pleasure being here tonight. Senator DeConcini sends his best wishes to you, and asks me to say that he is sorry he couldn't make it, but you are probably aware that the Congress went back into Session yesterday, in what is commonly known as a Lame Duck Session; what they are going to do between now and the time they go out is questionable, but at least they are going to give it a try, and he just had to be in Washington because of his voting duties. As you know, voting was one of the issues in the recent Senatorial Election between Senator Goldwater and the candidate for the Senate Bill Schultz, and so Senator DeConcini likes to be there as much as he can to keep his voting percentage up there. We may have an opponent, in fact, I'm sure we will have an opponent 2 years from now. He is busy, making sure that his record is such so it can't be attacked from that standpoint.

It is a pleasure to be here tonight. I was talking to Senator Hubbard a few minutes ago. His office is right next to a good friend of mine's office down at the State Capitol, Tony Gabaldon, who is State Senator, I believe of Legislative District 2, the Flagstaff area. He was mentioning that he and Tony had to kind of stick together along with the rest of the Democrats down there, because they are of course in the minority, not only in the Senate, but also in the House. I think that the Democrats back in the U. S. Senate are going to have to talk with Senator Hubbard a little bit more to find out exactly just what to do, since this will be our first experience of being in the minority for 24 or 25 years.

Coming up to Sunrise reminds me of a story that I've heard several times about a minister from Flagstaff. He was really having a terrible time getting his congregation to attend Sunday services not only during the summer, but during the winter because of skiing not only here at Sunrise, but also at the Snow Bowl. He talked this over with his wife for many months, and couldn't really come up with a remedy to this problem. So one week, the first part of the week, he was again discussing it with his wife, and he said, "I just have got to do something about it. The attendance is terrible. I believe I am going to have a sermon on skiing next Sunday." His wife gave him a funny look, and said, "What do you know about skiing? You know nothing. Besides that, what does it have to do with church and God--how are you going to relate it?" He replied, "Well, I'll be able to do that. Besides I read a lot of articles in Sports Illustrated and other sports magazines, and I can handle the technicalities of skiing."

He worked on this all week. Towards the end of the week he started practising it on his wife, and she was still very apprehensive, even after hearing it the 4th or 5th time, if this was really going to work out. So Sunday morning he was in his study going over this sermon on skiing for the last time before delivering it, and his wife walked by, and she says, "If you don't mind, I've already heard this three or four times, I know what it is all about, and I'm still a little concerned about it, and I think I'll go for a walk out in the park while you deliver your sermon." He agreed with her that that was fine. And she left. Between the time that she left and the time that he was to deliver the sermon he decided that maybe she was right, maybe a sermon on skiing was not appropriate. So he decided to deliver it on Human Sexuality, and he got up and he did a magnificent job about the relationship between husband and wife, and how it relates to God. And at the end of the service everybody left being very pleased with the sermon. His wife saw the people coming out of the church, and started walking back across the parking lot to the church, and she met up with a couple that they knew rather well. The wife came up and embraced her and said, "I thought it was the best sermon your husband has ever preached! It was just magnificent...you know, we really had some questions, and he was really able to answer those in his sermon today." The pastor's wife looked at them and then said, "You know, I just don't know what he knows about this at all. He's only done it twice--once before we were married, and once after, and fell off both times."

So I don't know how my talk on the Tribal-State Compact Act is going to go, but hopefully I won't fall off. If you don't mind I am going to read this speech that gives some background on the Act and also tries to describe some of the things that it does. Hopefully, it won't take too long. After that part is over, if you have any questions on the Bill itself, or on anything else that you might think I might be able to answer, and I'm not guaranteeing that I will be able to, but if you think I can I'll give it a shot.

ELEMENTS OF THE TRIBAL/STATE COMPACT ACT OF 1980

Since the Tribal/State Compact Act was first introduced by Senator Abourezk in the 95th Congress various questions have arisen regarding its necessity, and at least from the Indian perspective is this particular piece *of proposed legislation really in the Indians' best interest.*

Before attempting to address some of those questions, perhaps a brief examination of the background of this bill would be appropriate. A great deal of time and attention was devoted by the American Indian Policy Review Commission in its deliberations and in its report to the question of jurisdiction and governmental authority in a broad number of areas. The report noted that there are significant tensions between States and tribes, at least some of which arise from jurisdictional issues.

There are presently some 287 Federally recognized Indian tribes in the lower 48 States, plus numerous organized villages and tribes in the State of Alaska. There are vast differences in physical, economic, and human resources among these various governments, both State and tribal, and the concerns of each of these governmental units vary accordingly. It was the recommendation of the American Indian Policy Review Commission that States and tribes enter into a dialogue with each other--hoping that these discussions might lead to agreements at the local level regarding some of these jurisdictional questions.

Thus, believing the recommendation of the American Indian Policy Review Commission to be valid, and that the issues which cause tensions at the local level should be resolved at the local level wherever possible, Senator Abourezk in the 95th Congress and Senator DeConcini in the 96th Congress have chosen the Tribal/State Compact Act as the vehicle for meeting these objectives.

Perhaps the most often asked question regarding this vehicle, S. 1181, in the 96th Congress is--Is the Tribal/State Compact Act really necessary? In fact Senator DeConcini had this same question in mind when during hearings on S. 1181, held in Washington last March, he asked Department of Justice officials, "Does S. 1181 permit the States or the U. S. Government to do anything that they are not already permitted to do?" The response was, "I think, Mr. Chairman, that at least the feeling in both the Indian community and the States is that there are certain impediments to their entering into the types of agreements that are contemplated by S. 1181, and I think that this type of legislation would resolve at least some of those concerns." Not content with the reply Senator DeConcini pressed the official by asking, "In your opinion, are there any impediments, particularly legal impediments, other than psychological ones?" The Justice official responded by saying, "I am not positive. I think we will have to look at that problem."

The official then went on to say that one problem addressed by the bill is that of sovereign immunity. The bill does authorize the voluntary waiver of sovereign immunity which relates to the enforcement procedures found in the bill. I will come back to this provision later.

The most objective interpretation of this exchange between Senator DeConcini and the Justice Department official, who is an "expert" in the area of jurisdictional issues, would be that it is not clear whether legal impediments are present that would presently preclude agreements between tribes and other governmental entities. Furthermore, the legal authority to enter into such agreements is uncertain.

This latter statement is based on the fact that recent court decisions have "muddied the waters" as to whether States, counties, and other units of *local government can enter into agreements with tribes relating to jurisdictional issues. First, it must be kept in mind that Federal authority to regulate affairs with Indian tribes is preemptive, leaving no room for States to exercise jurisdiction over Indians or their property within Indian country except as specifically authorized by Congress. This rule has repeatedly been reaffirmed by the Supreme Court in recent years.*

Two key legal tests are employed to determine whether State action in Indian country can be sustained. The first is whether the action "infringes" on the right of the Indian people to be self-governing; and the second which I just mentioned is whether the action is precluded because of Federal preemption.

Both of these tests have been enunciated in several court decisions. In Kennerly v. District Court, it was held that a State could not exercise civil jurisdiction over an Indian for a transaction within a reservation even though a tribal ordinance authorized State jurisdiction over civil matters within the reservation. Applying the "preemption" test, the Court held that in the absence of compliance by both the tribe and the State with some Federal enabling statute, in this case Public Law 83-280, the jurisdiction of the State over an Indian person in Indian country could not be sustained. In McClanahan v. Arizona Tax Commission, decided two years later, the Court explained the "infringement" test as one permitting the States to apply their laws over non-Indians within Indian country "up to the point where tribal self-government would be affected." The implication of McClanahan, is that tribes may exercise some jurisdiction over non-Indians within the reservation boundaries. However, in Oliphant v. Suquamish Tribe, it was held that Indian tribes lacked authority to exercise criminal jurisdiction over non-Indians within their reservation. While the implication of McClanahan lingers, it is clear from Oliphant that insofar as the inherent authority of tribes over non-Indians is concerned, the "infringement" test can only have meaning in the area of civil law.

While these tests provide a substantial measure of protection to the governments of Indian tribes, the preemption test particularly may work on occasion to thwart the efforts of tribes to work with States. The Kennerly case has already been cited. In Blackwolf v. District Court, it was held that the State of Montana could not exercise jurisdiction over an Indian juvenile for conduct within a reservation, even though the child had been adjudicated delinquent in tribal court and remanded to State authorities for further proceedings in accordance with a tribal ordinance that provided for such a procedure. And in White v. Califano, it was held that a State could not exercise jurisdiction to order an involuntary commitment of a mentally-ill Indian who resided within a reservation, even though the tribal court had adjudicated her to be mentally ill and ordered her to be placed in the custody of her IHS psychiatric social worker for commitment to the State Human Services Center. In these instances, it is clear that the interests of tribal self-government would be furthered by allowing tribes to arrange with States for the enforcement of the tribal law or the application of State law to their own tribal members in selected circumstances.

The only Federal statute which currently allows States and tribes to enter into agreements respecting jurisdiction is Public Law 83-280 as amended by Title IV of the 1968 Indian Civil Rights Act. However, there are substantial legal questions under this act, such as the right of a tribe to rescind a jurisdictional grant to a State and reassume authority itself;

or can a State enter into an agreement with a tribe to enforce tribal laws relating to fish and game regulations, or for the sale of alcoholic beverages within an Indian reservation, and so forth.

Given the inconclusiveness of the necessary authority for tribes and States to enter into agreements--as you can see from the various judicial decisions no clearcut answer is available--those advocates of such agreements felt that general Federal legislation authorizing tribes to enter into agreements with State, counties or municipalities needed to be developed. Thus, S. 1181 came into being as the vehicle for granting this authority.

Aside from the legal questions, another very important impediment to agreements between States and tribes on jurisdictional issues is monetary support for the costs involved in necessary governmental operation. For example, it was this monetary burden which caused *the State of South Dakota to resist jurisdiction over the mentally ill person in White against Califano.*

A short, concise answer to the question raised several minutes ago--Is the Tribal/State Compact Act really necessary?--is yes--assuming that you believe that tribes and States should be encouraged to enter into these types of agreements.

Another question frequently asked--primarily by tribal officials--is, "Can the Act be viewed as an initial step in the revocation of treaties, termination of reservations and the Federal government's abdication of its trust responsibilities?" The answer is very simple--NO. I can assure you that if the intent of the Act, or its practical effect was to abdicate the Federal government's responsibilities relating to Indians, Senator DeConcini would not have introduced the bill, nor would he support it.

The Senator views S. 1181 as furthering Indian self-determination. By permitting tribes and other governmental entities to enter into agreements, not only will existing barriers between tribes and local governments be removed, but tribal governments will have one more tool to use in their move towards less Federal governmental interference.

A brief description of what the bill actually contains might be appropriate now that I have convinced you that the act is really necessary. First, the bill reaffirms that it is the policy of the United States to continue to preserve and protect the tribes of the American Indian people. It rejects the policies of termination and states that the policies of the United States will continue to recognize the governments of the Indian tribes.

Then, Title I authorizes tribes to enter into agreements with States which will permit States to apply and enforce State or tribal laws over Indians in those cases where the tribe has the underlying authority. Further, Title I authorizes States to enter into agreements with Indian tribes for the enforcement of State or tribal laws against non-Indians within Indian country within the tribal judiciary in those cases where the State has the underlying authority.

Also, Title I provides that either party may withdraw from an agreement within six months of serving written notice to the other unless a greater or shorter period is established in the compact or agreement. However, any agreement or compact that contains a provision extending the agreement for *five years or longer must be ratified by the members of the affected tribe in accordance with existing law.*

Title I also, provides that the Secretary of the Interior may provide financial assistance to the parties to any tribal-state compact for costs of personnel or administrative expenses in an amount up to 100 percent of the costs actually incurred. An authorization of appropriation for $10,000,000 for the first fiscal year is provided to carry out this assistance. Such sums as may be necessary are authorized for succeeding years. The authorization is a secondary source of funding and is to be used only when other Federal funds are not available.

Title II encourages tribes and States to participate in planning and monitoring boards that deal with jurisdictional issues. Funds are authorized for this purpose.

Title III provides that enforcement of the agreement or compact lies with the United States district courts and that sovereign immunity of parties to such agreements is waived unless otherwise specified.

S. 1181, the Tribal/State Compact Act of 1980 passed the Senate on May 30, 1980. It is presently pending before the House Interior and Insular Affairs Committee. If I had to make a prediction as to enactment of the bill, I would have to say that it will probably suffer the same fate as its predecessor in the 95th Congress S. 2502--that is S. 2502 passed the Senate but the House did not take any action.

MODERATOR CLINTON PATTEA:

On behalf of the Commission of Indian Affairs we would like to thank Mr. Mulkey for taking the time to be with us tonight to speak on the State-Tribal Compact Act which was introduced by Senator DeConcini last year.

FRIDAY

NOVEMBER 14, 1980

The meeting was opened at 9:45 A.M. by Clinton Pattea, Moderator. He announced that the Hopi Chairman, Abbott Sekaquaptewa, had another commitment, therefore, he would address the Conference first.

TRIBAL PRESENTATIONS:

MODERATOR CLINTON PATTEA INTRODUCED MR. ABBOTT SEKAQUAPTEWA, CHAIRMAN, HOPI TRIBE:

Thank you very much, Clinton, Ladies and gentlemen, and the tribes represented here this morning.

You can tell from my paper here that I am not going to be talking very long this morning, and I think it's better that I don't. I have a lot of information to convey to you this morning. I want to say that I am very pleased to be here and to see some familiar faces from my staff, and others that have been attending the meetings. I bring you greetings from the Hopi Tribe, and hope that one of these days you will have an opportunity to come *to our reservation so that we can visit with you, and perhaps discuss some matters of mutual concern of which there are many. I think any concern that brings people together, whether it be on an individual basis or in groups, however large or small, or whether they be governments more or less of equal stature, any communication, agreement or relationships are necessary and to the mutual benefit, needs to be based on principles that will work to the benefit of both parties. Some of those of course are mutual respect, recognition of each other's rights and authorities that they may possess, and a spirit of cooperation.*

Today, we are concerned about the status of relationships of Indian tribes as governoring units and the states within which they are located, and their powers of government. Realizing that tribes and state governments are distinct and separate political entities, I think it is very important that a recognition of a relationship based on those principles, some of which I mentioned, forms a solid basis, because many of us find our existing authorities in the Indian Reorganization Act of 1934. I think for the most part, we have statutory authority enabling us to enter into agreements.

Because there are so many things that concern us today that impact on our lives as Indian people, and upon our existence as tribal governments, that it is right, and it will be necessary that we have the tools, and the procedures, and the necessary laws which will enable us to build and develop the kind of relationship with the government of the State within which we reside, not only for our own protection as tribal governments but for the general welfare of our people, so that we can be a contributing member to the society of the State within which we reside.

Sometimes, things are very difficult, and I know that we don't all agree on how to best approach these problems that we are confronted with today. And to a certain extent I believe, at this time, that a forum is needed, perhaps which through tribal-state agreements could be either worked or cleared, or to have their assistance in arriving at the most mutually beneficial facts of understanding that need to exist. Such a forum could assist in negotiations of agreements, for instance, or at times could serve as an arbitrator to stand between the two parties during the sessions of negotiations. Sometimes, it is necessary to have an arbitrator. I know, that in the history of my own tribe, we have had to sit down with other tribes and try to work out some mutually agreeable arrangements, but it's very difficult unless you have a disinterested party sometimes to stand in between to try to maintain a form of equilibrium, and to maintain a discussion on target, so that the real issues are in focus and can be resolved. This is the reason why I think that a forum that could provide arbitration could be a good thing. It is also possible that such a forum could at times, once more, step into the picture and recommend revisions, or to improve upon agreements to afford or enable continuation of agreements, or when necessary, to recommend suspension of agreements.

There has been some work done on having a legislative committee that would be involved as to the question of tribal-state relations, and I think that we don't all agree on it. Some tend to feel that it would create a lot of red tape. Others think that it would delay matters that need to be worked out, and that it would be too political and perhaps too one-sided and loaded on one side. But I think that although it may not be something that's to the liking of the many Indian people, it doesn't necessarily mean that it is all negative, because an effort to have a legislative committee involved with *tribal-state relations is a recognition that tribal governments, to an extent, are co-equal with state governments.*

One option that has been noted, at least from our side, for such a forum is the sponsor at this conference today, the Arizona Commission on Indian Affairs, perhaps reconstituted to reflect a more equalized distribution of representatives from the State and from the Indian tribes, not necessarily numbers, but in expertise and experience and knowledge. This may require the passage of enabling legislation on the part of the State to empower the Commission or some other forum to process and be a clearing house for tribal-state agreements. It is very important that the State of Arizona authorize a unit of government or specifies designees that would carry out this work.

Although we may feel that because we have a special status under the laws of the United States in our relationship to the Federal government, and it affords us the necessary protection, that we have no need to enter into agreements with the states, this is not going to be the case always. It is not going to be like this forever--we need to take the time now, when we have the time, to gain experience in dealing with the states while they are willing to deal with us on a co-equal basis to carry on inter-governmental relationships in the form of formal agreement. We will begin to find what we can do. Whether agencies of tribal governments can enter into agreements with agencies of the State, and to what extent they may do so, whether a tribal government has the necessary authority to enter into an agreement or a contract on its own *with the State government, or whether it will require a vote of the people of the tribes to authorize some agreement. There is such a broad field of uncertainties and unknown that we need to be thinking about getting some experience in these areas of concern.*

I am not prepared to discuss specific issues this morning because I think it tends to get a little bit redundant, and perhaps maybe that what I have in the way of specific problems would not be of any interest to you. I think one of the things we are involved in that I would like to comment on, is the area of law enforcement because that is where the conflicts and misunderstandings occur and sometimes create problems for us. There is much that needs to be done in the way of providing for ourselves the necessary tools that will enable us to process, for example, extradition, so that we can be able to resolve problems of people who have gone contrary to the law, and have gone elsewhere, perhaps, to another reservation or to another state, and we're not able to fetch them because we don't have the procedures available, and vice versa. I'm sure that all of us on our reservations have people that are probably wanted somewhere and they can't get them. There is a question of cross-deputization of tribal police, which I think is pretty common at this point, but I think there are some gray areas as to authority as to what they can and can't do. We have State highways running through a number of reservations that makes cross deputization necessary. Yet we have questions whether tribal police have the authority to arrest non-Indians.

Another area that I think needs to be addressed very carefully, that can be worked out at least initially by tribal-state agreements, are the orders of the tribal courts. There needs to be full faith and creditability given to the acts of judgements given by tribal courts so that they can have the same status as any other court anywhere in the country. I am particularly concerned about this because we're very much involved now in children's codes for example. In an effort to address the problem we are experiencing right now by our young people, we need to have the tools necessary to attack these *problems and find resolutions to them. But unless we do that, unless we stabilize the problem of youth today, our continued existance of a strong tribal government is probably very much threatened.*

In any case, to repeat myself, the special status of an Indian tribe and their relationships with the federal government is not going to last forever. We can work very hard to protect that special status as long as we have the strength to do that, but because of the way things are, because the world changes, one day we are going to have to be a part of this State and its people, and in order to fit into that and still retain our identity and our way of life, we have to have something to go on, and now is the time to see to it that we protect those by being willing to cooperate with the State, and if necessary, to give recognition to the necessity of having agreements that recognize our rights, those rights that I am talking about and that give us status to Indian tribal governments as a voice of their people. Our prosperity depends on our confronting what needs to be done, and to begin to go to work on them.

Those are just a few comments that I would like to make this morning, and I appreciate the opportunity to say what I think, and I hope this meeting is very successful. Thank you very much.

MODERATOR CLINTON PATTEA:

Thank you very much, Abbott, and we do appreciate you taking the time to be with us this morning, and we wish you well. Come again next year.

We are privileged to have with us the Vice-Chairman of the Navajo Tribe, Frank E. Paul.

CLINTON PATTEA, MODERATOR, INTRODUCED MR. FRANK E. PAUL, VICE-CHAIRMAN, THE NAVAJO TRIBE:

Thank you, Mr. Pattea; various members of the Tribal Chairmen; in some cases, I believe, Vice-Chairmen, tribal staff; and State of Arizona representatives. I am privileged to be here by your invitation. I'm pinch-hitting for Chairman Peter MacDonald who is on travel today and could not be here. I represent the Navajo Tribe from Window Rock, Arizona. I would like to introduce one other person from Window Rock who is here--Mr. Ron Wood. He is Executive Director for the Division of Health Improvement Services. Also, I believe we have a newly appointed person to this organization (the Commission of Indian Affairs), and that is Mrs. Rosetta Hubbard. I would like to introduce her. She is sitting in the back; would you please stand. She replaces Leo Denetsone who is no longer employed by the Tribe and, therefore, does not now provide the communication link that is necessary. Also, it is an honor for me at this time to introduce one of our members who is proving himself to be a proven leader, and has just won re-election to the Arizona Senate seat--Senator Arthur Hubbard, Sr. I don't think he is a stranger to anyone here.

I'd like to offer some comments. I'm not here to give you a prepared statement, but I want to recognize that the Arizona Commission of Indian Affairs in the last seven or eight years has truly proven to be a link between the Indian tribes, small or large, and the State government. In reviewing the Annual Report, it reveals that we have recognized the fact that *this body keeps in touch with some of the various issues related to Indian tribes. The tribes have concerns, although in many cases, as expressed by Mr. Abbott Sekaquaptewa, a speaker before me, they are common concerns, but are real concerns. They are real issues, and the Indian tribes must come to face with them, and in some cases attempt to resolve them. In other cases the State may take some leadership, while in other cases the Indians will continue to maintain some sovereign status through various treaties with the United States government. I think that that is something that we, our forefathers, our children, and our grandchildren are going to recognize as something very special; the Indian treaties with the United States government are going to mean something in the future. Inasmuch as possible, I believe we need to keep that relationship, for it is the only thing that we got from the Europeans, and something that we can keep and share for as long as we can.*

I'd like to offer another comment or two, since your topic for this session--the 8th Annual Arizona Commission of Indian Affairs Conference--is State-Tribal Relationships. For the Navajo, it has been some time now since we have started to get ourselves involved in State activities, and several years ago, back in the mid-fifties, the Arizona public school was introduced to the reservation and since that time some elementary school districts were authorized. Many of you know that only through hard work by many of you, those in the field of education, and those elected officials in the State government, some new high school districts have been authorized just this year. Of course, the first tribal involvement in the State function, I believe, was on the school board. Many of you, I am sure, have had someone on your local school district board. For the Navajo, nearly all the school board members are Navajo. I suppose we thought we took control of the public education program at that point, but it has been some years now and we have come to realize that that is a very small portion of our involvement in the public affairs. Certainly we are doing the best that we can.

Also, a few years ago we started to involve ourselves in the state and national political process. We are fortunate on the Navajo that we do have three people who have served in the State government. One I already introduced, Senator Hubbard, serves in the Senate; we have two others who won reelection this month. One is State Representative Daniel Peaches, a Republican and the other is State Representative Ben Hanley, a Democrat, and they tell me they get together either before or after the sessions so they know what's going on on the Republican side and on the Democrat side. They also get together and talk with the Senator and in this was they keep communications on some issues that are of concern, not only to the Navajos but all Indian tribes in Arizona. This political process and participation have helped the tribe. I believe this sort of tribal participation in the State government crystallizes the title which you attached to this conference--"State-Tribal Relationships". We are hoping that the other tribes are doing the same thing.

In the last election, again this month, we have started to get ourselves even more involved in the local county government. In Apache County we had two Navajos elected to the County Board of Supervisors. Many of you may recall elections for the two County Board of Supervisors were taken to local Court and Appeals Court in the State of Arizona. We were fortunate in that the higher courts of law decided that the Indians, although they reside on the reservation with non-taxpaying status, had a right to sit on the County seats. That was some years ago. This year we have added some more to the county seats in Arizona. We have Percy Deal who won election in Navajo

County; we have a lady, Louise Yellowman, that won a county seat in Coconino County. So, we now have one in each county across the reservation or in each of the three counties that touch our reservation. We think this is good for us and this is going to provide for a communication between our tribe and the State government, we can be verbal at conferences or meetings. We actually have representatives there fighting for causes. I don't mean physical fighting, but people going out and campaigning hard just like non-Indians off the reservation do. They come on to Indian reservations and want the Indian votes so that they can get into offices. We are finally coming around to learning that trick of campaigning on the reservation. Now and then we get off the reservation, and ask the non-Indian people to vote for those individuals whom we feel are going to provide good leadership, for not only the Indian tribes but for all citizens of the State.

I don't want to say too much more except that I want to refer again to the treaty relationship between the Indian tribes and the United States government. President-elect Ronald Reagan very clearly indicated before the election that his position would be to recognize the Indian tribes as being separate entities or separate self-governing bodies and, therefore, would treat Indian organizations on federal government to Indian government basis; this would be the same as the federal government giving individual treatment to each of the 50 states. The United States government and the State government go so far in their relationship and their dealings with one another. Likewise, I think the President-elect's definition and desires to work with the Indian people is the latest fresh definition; it is a re-definition in that he will deal with Indian tribes on a government-to-government basis. This is good for the Navajo Tribe; I say the Navajo Tribe because the Navajo Tribe is one of the largest tribes. Looking over your Annual Report, the Navajo Tribe represents over 85,000 members and is shown as the largest tribe of Indians in Arizona. And no matter how small the Indian tribes are, I don't know which is the smallest tribe in the State of Arizona, the benefits thereof are rights, a privilege, and inheritance. To know even the smallest tribe in Arizona has a separate but distinct relationship with the United States government, this is an inheritance and is beneficial. Therefore, I think it is good for every tribe that has a treaty with the U. S. Government. For the Navajo, there is a treaty which contains areas of education, community development, social services, general overall welfare, etc. It is going to mean a great difference to us. It is going to mean that we can recognize ourselves more as a self-governing body and a sovereign status is going to prevail. We are going to be able to have that relationship with the United States government strengthened, and with that kind of scenario we like to think that we want to have a distinct and separate, but real-working relationship with the States; in this case, with the State of Arizona, since our reservation covers three states. Those people representing the Governor's and State offices will sit across from each other and be able to discuss the various issue and programs that will affect us.

I think this relationship between our tribe and this State is going to be enlivened more. We have, like other tribes in the State of Arizona, had a matching program, whereby the tribe comes up with some portion of the cost of programs and the State matches to complete a package program. Some of the Indian tribes entered into contracts, agreements, or other arrangements to enlarge programs. This has been good and I think it should be encouraged more. We have some issues which need to be resolved. I won't take the time to address these now, except mention that in the future I believe our relationship with the State of Arizona is bright and our relationship with the federal *government is going to be better. I'd like to say the Arizona Commission of Indian Affairs is to be commended for staying on top of these issues affecting Indian tribes and for keeping the State government informed, and for getting the Indian tribes together so that some of this information can be shared.*

I don't want to take any more of your time, so will close my comments at this time. Thank you very much.

CLINTON PATTEA, MODERATOR:

Thank you very much, Mr. Paul; we appreciate your sharing your concerns and ideas in terms of state-tribal relationships that we have here in this State. We wish you well and hope you can be back next year. To go back to our regular Agenda, we would like to call on Mr. Harlan Scott at this time.

MR. HARLAN F. SCOTT, ASSOCIATE JUDGE, COLORADO RIVER TRIBES:

Thank you, Clinton. -- If I were an Indian in the entertainment world I would say "what an act to follow!"--two men who devote their time to tribal activities. Here I am, a layman, and just as a matter of information, I was recently appointed Associate Judge of Colorado River. Greetings from Franklin McCabe and the Colorado River Tribes! As I said, I am newly appointed Associate Judge of the Colorado River starting October 14, and I happen to be here because I'm representing Luther Stanley who is Chief Judge, who became ill, and had a heart attack a week ago. When we realized the seriousness of his illness we went to work and tried to get some representation up here, because we felt some of the issues that you were going to discuss at this Conference would be relative to what we are looking at down the line in our judicial department. However, as I got ready to leave, I was told to represent the tribes, so here I am. I really appreciate being here and I've enjoyed every bit of this.

I got into some of these tax statements that were made, and I sort of go along with Mr. Lavell--let's identify the issues and let's do something about the issues. I think in many areas in contracting or in agreements the only time things become burdensome in our understanding is if we arrive at disputes. Disputes then become issues in our contracts. If you have a good, formal contract, you've got a binding contract; everybody is bound by that contract, and you accomplish your contract, and there is nothing else to be done. Everybody is happy and we go down the road with our accomplishments. I think too many times we try to look at the issues.

I think Mr. Paul mentioned something that has been in the back of my mind since this thing; we're coming up with a new bill that is being introduced. One wonders why we need another document in order to tell us that we have contracting authority. I thought the establishments of tribal governments allowed us this. There are certain things that have to be approved by the Secretary, and I think that is the big bone in the entire issue of the understanding that we might be able to reach with the State government; that approval factor is removed from some of the things that we are having to do. We, as Tribal governments, have the authority to contract, and so long as we reach an agreement, and that agreement is such that we can define what we are doing, and we're all happy about what we are doing, there should be no problems. I feel like somebody else says, "we need another document to tell us that we have contracting authority".

I don't have too many other things to say except in Law and Order, and as I said, I have been there a whole month--that's an awful lot. In a month we have seen a whole cross-section of cases, and we are a little more fortunate in Parker in that the township is enclosed by the reservation. As a result, we work very closely with people in town, with the Counties, and since the Highway goes through our reservation, we work with the Highway Department. It just so happens that the other individual who was appointed along with me, heppens to have spent 11 years in the State Highway Department, so between the two of us we haven't run into any problem areas with respect to the processes that we have to abide by.

We touched on one other factor, I think, that has been a real key to the way I have thought in the last few years. I retired from the Bureau of Reclamation after 35 years, and the last 3 years I have been working in the sports program. I think Mr. Paul said it again very well, and so did Abbott, that the youth are the future of the Indian people. We have got to stabilize our youth, and that we need to do something to turn some of them around, and make them realize they have a certain heritage that is much more than their own personal desires at the moment. They have got to look ahead. As I talk to these youngsters I keep mentioning to them - look at yourself in 15 years from now. Look back and see what your pattern of life has been. Your pattern of life is like walking down a road with a lot of facets. How you polish those facets become a plateau in the area where you can look back and say, "Hey, I have some shiny spots here"--the dark spots representing some of the areas you had trouble with. So, what I think they are saying here is very true, that we've got to look to our youth as a continuation of tribal help in our reservations.

MODERATOR CLINTON PATTEA INTRODUCED MRS. LEONA KAKAR, CHAIRPERSON, AK-CHIN TRIBE:

I don't really have anything prepared in the way of a written statement since there is very limited natural resources on the Ak-Chin Reservation.

The only resource worth speaking about is our Farming Operation. We farm about 5,000 acres at present, but we have farmed as much as 11,000 acres between 1962-1967. The drop in acreage was due to lack of water. All our water is pumped water, since we do not have any surface water, which some of the other Reservations have. Water is expensive when you are pumping from 650-850 ft. with the water table dropping about 20 ft. per year.

Being a small Reservation of about 390 members, we do very well with our farming profits as a self-supporting Reservation.

Ak-Chin has a Water Settlement Act - P.L. 95-328, which was signed July 28, 1978, in which is stated that we settled our water rights for a permanent supply of 85,000 acres feet of water per year. This will mean the phased development of up to 16,750 acres of agriculture land by 1984 when the first water is scheduled for delivery to Ak-Chin, either through a well field on nearby Federal lands, or CAP, or a combination of both, or whatever the Secretary of the Interior decides to use. If and when this becomes a reality, the Ak-Chin people will do very well from then on.

I was very impressed by Mr. Richard Wolfe's presentation on the Mobile Home Safety Installation Standards or Manufactured Housing Standards. Since *our Reservation does not have a fire department, we are very aware and concerned about fire hazards, especially where Mobile Homes are concerned as they are usually constructed very poorly.*

I personally will contact Mr. Wolfe when I get back home, and hope we can set up some kind of an appointment, so he and his inspection crew can come to Ak-Chin and check some of the Mobile Home installations and other problems that I am sure we have.

MODERATOR CLINTON PATTEA INTRODUCED MR. NORMAN AUSTIN, COUNCIL MEMBER, FORT MCDOWELL:

I want to say good morning to all of you tribal leaders, and the Chairman Clinton Pattea wanted me to say a few words.

Regarding our tribal issues I assume that most of you know about our reservation, Ft. McDowell and the Orme Dam issue. I guess we will find out what this next government is going to do once they get in.

Yesterday and today, especially yesterday, we all talked about tax on cigarettes, and I don't know if there is anyone else who owns a smokeshop here, but I'm one of the owners of a smoke shop on our reservation. Not only here in the State of Arizona, but I have resided in the State of Washington for many years, and moved back to Fort McDowell, and I've been in that business for 3 years since. When I was up in Washington we did fight this issue time after time. I fought along with the tribes, I struggled with them, we went to Federal Court and to State Court with them. We walked to Washington, D.C. Things like this I did for that Tribe.

I moved back here and said, why don't I put up my own business? I sell more than cigarettes, such as jewelry. We have people from the Navajo come down, and we trade just like the olden days; they give us rings, and we have blankets that we trade off with them. Some we buy. The Hopis and we do the same thing. We buy Kachina dolls from them when they cannot sell them in Phoenix or San Diego, or wherever, because as you all know the Austin Trading Post is right on Beeline Highway 87. We have people coming through there needing help, and with what little we have, we try to help them so they can get back to their reservation.

People keep wanting to tax the smoke shops--they want to tax us and give it to the State of Arizona so they can go ahead and give it to someone else. I pay my Tribe. I pay my Tribe to run my cigarette stand there.

Through money from the smoke shop, I try to help people any way I can. The Social Services are not helping. No program is doing it. There are some people on our reservation who are poor. And I am not getting rich off of my smokeshop. That's what a lot of people think, that you get rich off of it. You have to struggle. They are trying to shut us off because they are looking at a Supreme Court decision. Why does Arizona look up to the Colville Tribe in Washington? Why does the Supreme Court in the State of Arizona have to look up a decision in the State of Washington? Why can't the Supreme Court here just be the Supreme Court of Arizona alone?--instead of looking at somebody else? This makes me angry.

I've gotten in touch with the smoke shop owners and we are trying to solve something. At Salt River there are old people. They are hit hard with their own tax because most of the places out there is land, and they got a lot of white business on that reservation. And they turn around and hit them with 10% tax, and that is not right. That is not right at all. The smoke shop owners, who have to struggle, they are trying to shut them out. They're old people--this is an Indian business, an Indian organization. I don't know why people want to keep bothering us. I don't know why the State wants to put their foot in there and tax cigarettes. Where are the monies going? That is what we would like to know. Where is the money going once they tax us? We use our taxes to give it to the Tribe. The Tribe turns around and helps people through programs. That's what we would like to see done.

We have another big operation coming along on Fort McDowell, and that is sand and gravel. As soon as this tax thing goes through, the next thing you know they will be taxing us.

If you people ever come to Fort McDowell you will not see any white operators out there, you will not see a Circle K on the reservation, you would not see a white person with a business open, because our elders told us not to do that, to save what we have. We see other reservations in Arizona here that have white operators, and it's a shame, it hurts me, as they are the ones that are getting rich, not the Indians, yet the State wants to grab everything.

Up in the Navajo country I've got brothers and sisters, and they hurt inside because what is being done to their land. Now, they are starting to stop all that.

Yet, when we look down south here, what are they doing? Look at that aqueduct going right through a reservation, through the Salt River Reservation. I don't know if you people have seen that. It looks ugly. If that aqueduct had come to our Tribe I'd be damned but I'd shut that thing down. Going down to Tucson--I know they need water down there, but not through the Indian land. They needed to go through somewhere, some channel, but they destroy the Indian land, and we all know that. So let's fight, and let's try to get our land back. That's what my elders keep telling me. Not only my own people but all other elders here in the State of Arizona. I know a lot of them. It hurts me. I feel a lot of these things going on, but I know that we are going to be hit hard with taxes. Monday or Tuesday, I am going to have to go to the State Capitol and do a little lobbying. I don't know what the other smoke shop owners are going to be doing, but I'm trying to protect my little business. If they are going to tax it, I might have to go into some other business. But with the help of my Council people, with the good relationship that I got with them, they've helped me. They helped me get started. I don't know how you other Tribal leaders are in trying to protect your own people, your own little businesses but I really thank my Council people. Thank you.

MODERATOR CLINTON PATTEA INTRODUCED MR. ANDERSON MIGUEL, COUNCIL MEMBER, FORT YUMA QUECHAN TRIBE:

I'll just stand here as I don't have much to say. I appreciate the Commission for inviting me and Mr. Bill Curran. Our President, Mr. Vincent

Harvier, could not make it. This is all I have to say, but I will take this information back to the Tribal Council, and Mr. Harvier. Thank you.

MODERATOR CLINTON PATTEA INTRODUCED MR. GEORGE P. MIGUEL, EDA PLANNING DIRECTOR, PAPAGO TRIBE:

I got a call from Chairman Max Norris yesterday. He wants to send his apologies for not being able to make the meeting, and he wanted me especially to thank the host Tribe, Ronnie Lupe, and I guess he is not here either, so whoever could, please take the message back. To all the people out here I'd like to say that I am very pleased to be here. It is a very informative meeting.

I'm the Economic Development Planner for the Tribe, and I just wanted to make a few comments relative to state-tribal relations. Most of you, I think, know where we are situated. We are bordered on three sides by non-Indian communities--only on three sides, and we thought we were isolated, we were removed, we did not need to relate to the non-Indian communities. Maybe years back that was true, but we also have our problems with the country of Mexico, but that's a different issue. Like I said, we have three communities surrounding the Papago reservation, namely Tucson, Casa Grande and Ajo, and it seemingly is getting more and more important for the Tribe to relate to these communities, because we have to participate in their planning, the City planning, the County planning, and the State planning.

I think the most participation that the Tribe has now, as was mentioned yesterday, is in the Health Programs, in the State Health Programs, also the County Health Programs, but those are probably the major areas that we are participating in at this point. As I said, being a Planner it was brought out on a national level that the Tribal planning departments should relate to the states, cities and counties, so I have felt the same way, that we should be communicating, and participate on some of these policy-making boards, such as the Water Resource Division since water is a major concern to all of us. In the position that I have, I want to promote communications, and I do on the Tribal level. I try to convey to the other departments that in our planning we should consider County, City and State growth. So like I said, this is what I'm trying to convey to the Tribe, and I think the time is here that we have to do this.

On the political process, as Mr. Paul pointed out, the Navajos are participating directly, and hopefully, with the re-districting of the State district areas maybe the Papagos may be able to participate directly.

Another comment that I would like to make is on the myth of the non-tax-paying Indian. I thought that was a very good point that was brought out yesterday. I also believe that study should be updated, and highly publicized, because I think that is one of the myths that causes discrimination. You know, if they understood that because of the Indian, there is a lot of the monies coming into the State; take tourism, for example. Of course, a lot of federal bucks, too, but I think we really should take a look at that situation now and let the general public know that the Indian does carry his weight.

The last comment that I would like to make is on taxation. Now on the surface I believe that it is a threat to our sovereignty. But it is nothing that cannot be worked out. I think if you sit down and negotiate, and see how it can best work out for both the State and the Tribes. It is an important revenue to the Papago Tribe. We do tax the Tobacco Barn that is located on our industrial park in Tucson, and have a very substantial amount of revenue coming to the Tribe. So in that sense, it is very important to the Tribe to maintain that, and also it would affect other taxes, you know, which this might lead to. We want to maintain our sovereignty, but not close the door on the State. We should work together. So, I want to leave with the people here that let's do negotiate and we'll come to terms, instead of going into litigation.

This is an expression of my views as Economic Development Planner of the Tribe, not necessarily the views of the Chairman, but he does want to send his apologies for not being able to attend. Thank you.

CLINTON PATTEA, MODERATOR:

Thank you very much. I don't believe there are any other tribes that will give a presentation. We were expecting a few more, but apparently they are not going to be here. This will end the tribal presentations this morning. That will give you a chance to check out of your rooms, and we'll have lunch.

There are a number of resource people here from the Governor's office, such as Pat Schroeder; she has information that I know she would like to convey to tribal governments on Critical Issues that she's been putting together, as well as other programs in the Governor's Office, and maybe at the luncheon she can make a presentation.

Again, we want to thank the tribal people who have been here the two days as your input is appreciated. I'd like to mention that the Conference report will be distributed to all those interested in the proceedings of the Town Hall.

The meeting adjourned at 11:30 A.M.

Respectfully submitted,

CLINTON M. PATTEA
Executive Secretary

CMP/ras

BRUCE BABBITT
GOVERNOR

OFFICE OF THE GOVERNOR
STATE HOUSE
PHOENIX, ARIZONA 85007

IN REPLY
REFER TO:

November 10, 1980

Leona M. Kakar, Chairperson
Arizona Commission of Indian Affairs
1645 West Jefferson
Phoenix, Arizona 85007

Dear Leona:

Thank you for the kind invitation to attend your conference on "State-Tribal Relationships." It is unfortunate a prior commitment prevents me from attending.

The 1980's will be an important time for the maturation of the relationship between state government and the Indian Nations. I commend your efforts in holding this conference and wish it every success.

Best wishes.

Sincerely,

Bruce Babbitt

Bruce Babbitt
Governor

BB:dch

CONFERENCE PARTICIPANTS

CONFERENCE & STAFF:

Mrs. Leona M. Kakar, Chairperson
Mr. Sheldon E. Elman, Ex-Officio Member
Ms. Yvonne Lynne Garrett, Member
Ms. Charleen Greer, Ex-Officio Member
Ms. Rosetta Hubbard, Member
Mr. Paul Rees, Member
Mr. Clinton M. Pattea, Commission Executive Secretary
Mr. Tony Machukay, Commission Field Coordinator
Mrs. Rose Ann Stellhorn, Commission Secretary

GUEST SPEAKERS:

Mr. Phil Austin, Director, Division of Civil Rights, Attorney General's Office, State of Arizona
Dr. Eddie F. Brown, Director, Office of Intergovernmental Operations, Department of Economic Security, State of Arizona
Mr. Tom Clark, Deputy Director, Arizona Department of Water Resources
Mr. Elliott Hibbs, Director, Arizona Department of Revenue
The Honorable Arthur J. Hubbard, Sr., Arizona State Senator
Mr. William Lavell, Solicitor, U. S. Department of the Interior, Bureau of Indian Affairs
Mr. John Mulkey, Legislative Assistant to U. S. Senator Dennis DeConcini
Mr. Bill Vandenbosch, Planning Director, Office of Economic Planning & Development, State of Arizona
Mr. Richard E. Wolfe, Director, Arizona Mobile & Manufactured Housing Standards

TRIBAL REPRESENTATION:

Mr. David Kwail, Vice-Chairman, Yavapai-Apache Indian Community, Camp Verde
Ms. Denise Homer, Colorado River Tribes, Parker
Mr. Pete Homer, Sr., Colorado River Tribes, Parker
Mr. Harlan F. Scott, Associate Judge, Colorado River Tribes, Parker
Mr. Norman Austin, Council Member, Fort McDowell Mohave-Apache Tribe, Fort McDowell
Mr. Rickie McDowell, Fort Mojave Tribe, Mohave Valley
Mr. Sanford McDowell, Fort Mojave Tribe, Mohave Valley
Mr. William Curran, Council Member, Fort Yuma Quechan Tribe, Winterhaven, CA
Mr. Anderson Miguel, Council Member, Fort Yuma Quechan Tribe, Winterhaven, CA
Mr. Abbott Sekaquaptewa, Chairman, The Hopi Tribe, Oraibi
Mr. Fred Kootswatewa, The Hopi Tribe, Oraibi
Ms. Joann Masaquaptewa, The Hopi Tribe, Director, The Revenue Commission, Oraibi
Mr. Guy Suetopka, Jr., Director of Man power, The Hopi Tribe, Oraibi
Ms. Margaret Surveyor, Council Member, The Hopi Tribe, Oraibi
Ms. Phyllis Wittsell, The Hopi Tribe, Oraibi
Mr. Frank E. Paul, Vice-Chairman, The Navajo Tribe, Window Rock
Mr. Ron C. Wood, Director, Health Improvement Services, The Navajo Tribe, Window Rock

TRIBAL REPRESENTATION: (Continued)

Mr. Angelo Joaquin, Sr., Council Member, The Papago Tribe, Florence
Mr. Cipriano Manuel, Council Member, The Papago Tribe, Sells
Mr. George P. Miguel, EDS Planning Director, The Papago Tribe, Sells
Mr. Ivan Makil, Member, Salt River Pima-Maricopa Indian Community, Scottsdale
Ms. Mariddie J. Craig, Member, White Mountain Apache Tribe, Whiteriver
Mr. Harry Dillon, Sr., The Puyallup Tribe, Tacoma Washington
Mr. Harold Farris, The Puyallup Tribe, East Tacoma, Washington

GUESTS:

Ms. Sara Aleman-Burns, Department of Economic Security, Flagstaff
Mr. Leon H. Berger, Executive Director, Navajo & Hopi Indian Relocation Commission, Flagstaff
Mr. Jack Beveridge, Community Services, State Hospital, Department of Health, Phoenix
Mr. Joe Booth, Special Assistant, Department of Revenue, Phoenix
Mr. Jerry Calnimptewa, Office of Economic Planning and Development, Phoenix
Mr. Hollis Chough, Rehabilitation Services Administration, Arizona Department of Economic Security, Mesa
Mrs. Rita J. Elman, Phoenix
Dr. Gene Gerber, Chief, Area Dental Branch, Indian Health Service, HEW, Phoenix
Mr. Robert W. James, Department of Economic Security, Flagstaff
Mr. Joe Kakar, Ak-Chin Indian Community, Maricopa
Mr. Vincent P. Lachelli,,American Indian Engineering, Window Rock
Ms. Sarah Lopez, Mesa
Mr. Ian A. MacPherson, Attorney, Attorney General's Office, Phoenix
Ms. Judith A. Miketta, Acting Editor, Fort Apache Scout, Whiteriver
Mr. Abe Moreno, Center for Economic Development, Tucson
Mr. Jack O'Neil, Arizona Game & Fish Department, Pinetop
Mr. Mike Peterson, Indian Development District of Arizona, Inc., Phoenix
Mrs. Paul Rees, Tucson
Mr. Ryan Reinhold, The Arizona Republic Newspaper, Lakeside
Ms. Pat Schroeder, Indian Planner, Office of Economic Planning and Development, Phoenix
Ms. Melody Tucker, Arizona Department of Health, Phoenix
Ms. Brenda Young, Editor, Red Earth News, Phoenix